



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Sessional Committee on Constitutional Development

Foundations for a Common Future:

**The Report
on Paragraph 1(a) of the Committee's
Terms of Reference
on a
Final Draft Constitution
for the Northern Territory**

**Volume 5 - Part B [2] —
Hansard Transcripts of Public Hearings**

November 1996

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PLEASE NOTE:

- The Transcripts of Hearings in this Volume have been edited for consistency purposes. The substantial content of the Hearings have not been changed.
- Copies of the Originals are available either at the Table Office, Northern Territory Legislative Assembly or the Northern Territory Library, Parliament House, State Square, Darwin NT 0800.

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CHAPTER 2
HANSARD TRANSCRIPTS OF PUBLIC HEARINGS
EAST ARNHEM REGION

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

GOVE — Wednesday 20 July 1988

PRESENT:-

Committee:

Mr T. Harris (Chairman)
Mr B. Ede (Deputy Chairman)
Mr W. Lanhupuy
Mr R. Setter
Mr T. Smith

Absent (unavoidable)

Mr M. Perron

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Dan LEO
Mr Syd STIRLING
Mr Tony Macmichael

EDITED TRANSCRIPT

Issued: 12 August 1988.

Mr HARRIS: Welcome to this fourth public hearing of the Select Committee on Constitutional Development. First of all, I would like to introduce the members of the committee. My name is Tom Harris and I am the Chairman. Brian Ede is the Deputy Chairman. Here are Terry Smith, Wes Lanhupuy and Rick Setter. We also have Graham Nicholson, who is interested in constitutional law and he is the committee's adviser, and Rick Gray, who is our executive officer.

I would like to emphasise that this is a committee on constitutional development, it is not a statehood committee. That needs to be made very clear. The whole matter of statehood is one that will have to come from the people. People will have to decide if they wish to pursue that particular objective. We are a constitutional committee. We are looking at establishing the groundwork on which to form what will become our Northern Territory constitution.

There are 3 relevant documents which are available. They have been available since October 1987 and if anyone present has not received copies of those documents, they are on the table in front of us here.

The first document is entitled 'Options for a Grant of Statehood' and that sets out the 2 options available to us. One is the creation of a new state by an act of the Commonwealth parliament under section 121 of the Australian Constitution under which statehood may be granted on certain terms and conditions including the extent of representation in either House of the federal parliament as the Commonwealth thinks fit. The other method is by national referendum to alter the Commonwealth Constitution under section 128 by way of a grant of statehood. That is one document.

The next document is a 'Discussion Paper on Representation in a Territory Constitutional Convention'. It sets out a 3-stage process which has been proposed to draw up a new state constitution. The first aspect of that is that we, as the Select Committee on Constitutional Development, move throughout the Territory to establish the form of a constitution. That constitution would then be presented to a constitutional convention and finally a referendum of Northern Territory electors to approve the constitution as ratified by the convention. In this booklet, we also look at the convention's membership. There are 3 methods that are put forwards as options. Those options are for wholly-elected convention membership, wholly-nominated, and partly-elected and partly-nominated membership. Those are the 3 options that are available.

The third document before you is a document which leads into a whole range of issues. The legislature, which deals with the form and composition of the new state parliament, the electoral provisions, the executive, the judiciary, local government, matters relating to land, Aboriginal rights and human rights. Those issues are all canvassed in this particular document.

It is a difficult process that we are embarking on. In fact, it impacts on some 35 Commonwealth acts. Those acts are documented in paper No 1 and we still have to determine the precise nature and extent of amendments that would be required.

We aim to have the same constitutional rights, privileges, entitlements and responsibilities as people in the existing states. We look to having political representation on the same basis as do the existing states and we are looking at settlement of secure financial arrangements with the Commonwealth in line with those which are provided to the present states. The view of all members

of the select committee has been that the new state constitution must be prepared by Territorians and, with that in mind, the committee has embarked on travelling throughout the communities in the Northern Territory to receive written and oral submissions in relation to constitutional change.

As I said at the start, this is the fourth meeting that we have had. The committee is going through a learning experience as well. The method of notifying the various communities that we are in town, that we are willing to discuss and want people to come forward to present evidence has not met with a great deal of success to date, but we are addressing those issues. We have an extensive mailing list, and that list includes the judges, the unions, business and employer groups, local governments and community governments, political parties, teachers, educationalists, land councils and private citizens, and we expect that mailing list to grow over a period of time. If anyone belongs to an organisation or group that he or she feels would be interested to receive the documents that have been prepared and further discussion documents that will come out of this particular committee, then please contact our executive officer, Rick Gray, and give the name of that organisation or group or of any private person who you feel would like to receive that information.

For the hearing here in Nhulunbuy, we have not received any written submissions as such. I am not sure if any people here today would like to present oral submissions but please bear that possibility in mind because we would like people to come forward and make comment in relation to this very important exercise. If anyone does wish to come forward to give evidence, I would just ask that they state their name and address and indicate whether they are presenting that evidence in a private capacity or are representing some organisation or group. Does any member of the committee wish to say anything at this stage?

Mr EDE: Only to emphasise what you said about the danger of confusing this particular issue with that of statehood. There are people who maintain that the states should eventually wither away and that we should be looking at a unitary system of government for Australia, possibly with some form of regional government. However, that would require an amendment to the national Constitution and a very substantial period of time would be involved in that.

I think the most likely outcome is that we will be moving to become a state whether that is the final system that Australia opts for or not but, if at some stage, we are to move to become a state, we have to look at a constitution. A constitution can be regarded as the skeleton, if you like, of the laws and the way that we relate to each other, the way that we live together. We must then decide just how much meat we want to put on that skeleton at this stage or whether to give the government of the day complete freedom to decide what sort of system we will live in in the Northern Territory.

We have a great many issues to canvass. If we look at the way in which the states in Australia generally formed their constitutions, we see that they just say that there will be a parliament, a judiciary and so on whereas the more modern constitutions around the world have often been prepared closer to the American model where they have looked at things like Bills of Rights and being able to somehow say: 'How do we as Territorians relate to each other? What is the form and style of society that we will have?' It is for that reason that we are seeking to get very substantial community involvement. If people want a constitution which provides just the very bare bones then, as 1 journalist has said, that could probably be knocked up in 5 minutes. However, if people wish to indicate the style of society that they believe we should have, what freedoms we

should lock into the constitution and what things should be embedded as representing the very crucial core of Territory life, this process will provide them with the opportunity to start giving that indication. Now is the time to start discussing those aspects in order to reach a decision about how we will do it and how we will live together, not just during this century but also the next.

Mr HARRIS: Is there any further comment from members of the committee? Does anyone wish to give evidence, make any comments or ask any questions?

Mr STIRLING: Is there a time frame in operation for selecting the option by which the constitutional convention will be selected?

Mr HARRIS: No, that has not been reached at this stage. It has been floated that perhaps the convention could be set up at the end of next year, but we have to discuss that. To a large extent, it depends on our movements and the feedback that we get because there is a great deal of work involved. There is no strict timetable. We have to report back to parliament as a committee within a year of establishment.

Mr SETTER: May I comment on that, Mr Chairman? In this document, 'Discussion Paper on Representation in a Territory Constitutional Convention', it is indicated that the committee has already discussed that issue at length and proposed a range of options which still have to be considered. That is one of the reasons why this document has been circulated to the community so we can get some feedback. We will consider that at a future date and decide which is the best range of options.

Mr STIRLING: The committee does not have (inaudible) ?

Mr SETTER: No.

Mr HARRIS: There are a great many issues we really do have to come grips with. We have heard evidence given in Alice Springs regarding local government's participation. Of course, there is the matter of land which is very real in our situation in the Northern Territory where we have land rights and consideration must be given to our particular situation. There is also the makeup of the parliament. Those and many other aspects do need to be considered by the community and, as I mentioned at the start, it is vital that the people of the Territory make those decisions and put forward their views and ideas because it is only by them doing that that we can get a feeling of what the community really wishes.

It is difficult for us. We move around the communities. We are looking at ways of improving the means of informing people that we are available and we will be reviewing that when we meet in Darwin shortly. However, I would urge people here to consider the matters I have mentioned. It is obvious that to fulfil this exercise, we will need to revisit a number of areas and communities and hopefully, at that stage, more people will come forward to give evidence and to tell us of their ideas and views.

Mr LEO: Tom, I am interested to keep the conversation going but I am not sure of the answer to this one. You said that the committee was of the mind that we should become a state with the powers and privileges of the existing states within the Commonwealth and obviously we would have similar constitutional integrity within our own boundaries. Has there been any discussion

about whether we should have a unicameral or bicameral system, an Upper House and a Lower House? Has there been any discussion about that?

Mr EDE: In the committee's discussions to date, it has generally rejected the idea of having an Upper House. It is the committee's feeling that a Lower House only would be sufficient for our needs and that anything else would be an indulgence and ...

Mr LEO: Yes, I can appreciate that point.

Mr EDE: An interesting point was made in Tennant Creek. We received a submission from a gentleman there who stated that he thought that all the laws that were passed by the Legislative Assembly, meaning the Lower House, should then go for ratification to local government. In fact, what he was proposing was almost an Upper House which comprised the third tier of government. It is an interesting concept and, again, it is one that is taken on board because, theoretically, it is possible to have such a system. It just goes to show that there is an incredible variety of forms of government that we can look at and determine what we want for ourselves.

Mr HARRIS: Page 15 of this book canvasses that issue.

Mr LEO: Yes, I appreciate that.

I think there could be a fear in the minds of many people that the single-member-seat situation does not, in fact, necessarily guarantee broad representation. This could apply to the present situation in the Northern Territory, the present situation in any state in Australia. The result need not necessarily be broadly representative. Many people, certainly Aboriginal people and a number of European people, are genuinely concerned about that.

This is pure theory, but if you have single-member seats, you need only hold 51% of the seats or 50% of the seats plus 1 seat and then you only need 50% of the votes plus 1 vote in those seats to win them so, in fact, you can govern on 25% of the vote. That is in theory. I know it does not happen in practice. You need a little more than 25% of the vote actually to hold government with single-member seats. I believe one of the concepts behind an Upper House is that it is proportionally representative, it represents far wider and more diverse views.

Mr SMITH: I would like to make a comment on that. What you are raising is quite a valid proposition and those concerns can be addressed in 2 ways. One way is by having an Upper House, and I think that is probably pretty undemocratic. I don't think you would get much sympathy from many people at present for having an Upper House.

However, a second way is to have a serious look at having multi-member constituencies, as they do in Tasmania. I am not getting much help from my learned colleagues on the bench here at the moment, unfortunately, but I think it was in the mid-1970s that propositions were put forward by Senator Jim Keefe and others that we could move to a multi-member constituency in the Northern Territory. As a member of this committee, I would like to see a case argued for multi-member constituencies for people to examine.

For example, we have 26 members in the Legislative Assembly at present but, if there were only 25 members, the Territory could be divided up into 5 constituencies, each electing 5 members.

In theory, that would give a prospect of having 5 people in each electorate representing, at the least, the majority interest groups in the electorate. It does not work like that particularly well where it is tried but, certainly in Tasmania where it is tried under the Hare-Clark system, there is the ability for independents to get up, a much greater ability than independents have here. There are a couple of independents in the Tasmanian House at present. That may provide a way to guarantee reasonable Aboriginal representation, for example, that will not occur if we have single-member constituencies. Having said that, let's not forget that we have 2 Aboriginal members in the existing parliament and that that is because, under our single-member constituency system, Aborigines constitute a majority of some electorates.

Just to conclude on that, certainly I would like to see someone argue before this committee, next time around hopefully, a case for multi-member constituencies because I think it is a viable option that we should consider in this exercise.

Mr HARRIS: Does anyone else wish to comment?

Mr MACMICHAEL: My name is Tony Macmichael. Obviously, most of the people present would be aware of the various option papers that were produced for public observation late last year. In talking about constitutional development what we are saying really is, do we want to have a Northern Territory state, and why do we want to have that Northern Territory state? The reason seems to me to be that, over the 10-years of self-government in the Northern Territory, Commonwealth funding has constituted the lifeblood of the Territory government's ability to govern. Once those funding arrangements become suspect or are placed under review, increasing restraints are placed on the government of the day. In turn, the Territory's growth and prosperity is reduced to austerity in areas where proper development of our resources cannot proceed.

To me, as a citizen and a person who is interested in the future of the Territory, the important question concerning the east Arnhem region concerns the future of towns like Nhulunbuy and Jabiru in the context that they are not directly under the control of the Northern Territory government per se. In fact, in this regional community of Nhulunbuy, we are on a lease tenement that had been provided by the Commonwealth government prior to self-government being granted to us. The provisions of that lease term extend to the year 2053. Theoretically, then you will be reconstructing bushland that was here prior to the commencement of the bauxite mine.

In the intervening period, most members of the community arrived here, have settled here for a given length of time and will pass onwards to other parts of the nation leaving the new community. At this point in time, we do not have what we call open local government in Nhulunbuy. We have local government under an administrative arrangement which Ben ..?.. would be quite willing to give evidence on. It doesn't (inaudible), we don't have any voting rights. It does provide a form of control which, in effect, is cost efficient. It is perhaps for that cost efficient reason that local government does not exist in Nhulunbuy. If local government were to be put into place here, there would be a price to pay for it, and that would be an increase in costs. As most people are employed by the mining company, Nabalco, or in government institutions, semi-government authorities, with the government providing accommodation, I doubt that there would be a local demand for local government.

When it comes to state-type government, where we are in east Arnhem on an Aboriginal land area with a community based on a mining town, what is the future of Nhulunbuy in a state? What is the possibility of this constitutional development committee looking at the future of regional communities such as Nhulunbuy and Jabiru and saying: 'Will that community exist into the future state or will it be one of those expendable areas which, once mining is finished there, becomes an Aboriginal land area with perhaps a small infrastructure for administration of Aboriginal needs?' These are issues which I think go well beyond the tenure of the existing community.

I believe that an options paper should be considered by the Northern Territory government, not by a...(inaudible)... based on what would be the effect of statehood on east Arnhem as it applies to the towns of Nhulunbuy and, if you like, Jabiru. The fact is, of course, that in the community most people are asking themselves: 'If we want statehood, what will it cost us?' In my view, there would be a perception that Mr and Mrs Average Resident would not want to be seen to be putting into place constitutional equal rights with the rest of Australia at a cost of a \$30 a week increase in the cost of living. Everybody is of the view that they would like to have equal rights. We all want that. Essential to that, of course, is the question of government of our land and a broadening of that patriation component, the Aboriginal Land Rights Act. The policy options that will be available must be a matter of some significance to Aboriginal communities in Arnhem and east Arnhem, given that the Commonwealth government agreed to them.

I would ask the committee also, if the Northern Territory government is going to address statehood through its Select Committee on Constitutional Development, what is it doing in relation to a land use capabilities study so that we know that the land in our future state can be utilised? I have put the proposal that, running parallel with any drive towards constitutionally equal rights with the states, we should be developing, through scientific and practical data, a land-use capabilities resource so that we can direct the thrust of our capacity to produce and use our natural resources to support the income of a future state in a proper and correct way. We must have some form of strategy for the management of our state.

Danny spoke about the composition of parliaments and Upper and Lower Houses, and Mr Smith mentioned that there is probably a valid case for a multi-member constituency and representation in parliament. Others will be asking if we should we have the full number of senators in the federal parliament. I would submit that they would be extremely bored with the number of our population and the amount of work they should be able to do in the area of...(inaudible). Right on the ground, I would like to see an options paper being given to this community to consider, even if it were such that it became a strategy as to whether mining, the future of land management and the future of European settlements in Arnhem Land and east Arnhem Land were viable in a future state.

Mr HARRIS: Thank you, Tony.

Before opening that up for discussion, I would like to indicate that some of us felt that perhaps we were going about this exercise back to front and that we needed to talk about the whole statehood issue. However, when you start getting into that debate, it is extremely difficult because there are strong views on either side of the fence. This committee has been set up to look at the concerns of the community about the makeup of parliament and the sort of issues that you have raised about the implications for an area, and so on. We could look at those issues. But, when you talk about the cost to the people and factors of that sort, really it becomes a political argument. The

subject of education has been raised on a number of occasions with this committee and, on such topics, we start to get into the political battle. Really, we are trying to get down to the relevant issues and to talk about them in an open manner without getting into that kind of heavy, political debate at this stage.

I felt that perhaps we should have discussed the statehood issue before we got to this stage. However, this is the direction that we are following at the present time. Could I just say that the government is also looking at putting forward a further series of papers. The one I mentioned last night related to industrial relations upon statehood, a very important issue and there are 4 options that are to be considered. One is that the Commonwealth system be retained. Another is to have an integrated state system, a third is to have a separate state system, and the fourth is to have no formal system at all. The government has commissioned Sir John Moore to come to the Territory and prepare papers in relation to that. I will give the dates that Sir John Moore will be visiting Darwin and Alice Springs and the address to which submissions on that can be sent. He will be visiting Darwin from 4 August to 11 August and Alice Springs on 12 August, and he will be receiving representations from unions and employer groups on this particular subject.

Other papers are being prepared on a government basis. However, this committee itself is really trying to obtain comment from the communities. People are welcome to make comments of that kind, but whether or not debate on those subjects will ensue is a matter for conjecture. I don't intend to become deeply involved in those particular debates.

Do other members of the committee wish to comment?

Mr EDE: I have just a couple of items. I think that you explained the confusion that exists about the role of the committee as to whether we are talking about statehood or whether we are talking about constitutional development but, going on from that, you mentioned fiscal arrangements and the possibility or otherwise of people being financially disadvantaged by statehood.

This committee has asked the Treasury to prepare a paper on that so that we can have a look at it and see where that fits in. That will come to the committee and we will assess whether, in our view, it addresses the issues. People here would know, for example, the situation regarding mining royalties which are currently paid under federal legislation. We will have to see what sort of arrangements could be made on that and consider the possibility of Nabalco paying an 18% profit-based royalty, which is our system, rather than continuing to follow the federal system.

You spoke about the future of an area such as Nhulunbuy, which exists under Commonwealth legislation and on a lease from the traditional owners which is handled by the federal government. When you talk about a future for Nhulunbuy, I presume that you are speaking about the time after the mine has closed and that you envisage that the town will have an economic future then. You are not saying that we should build it up simply as a service centre? You are looking at tourism or something like that perhaps?

Mr MACMICHAEL: I would imagine. ...(inaudible)... The Aboriginal people in east Arnhem are counting on a town to service the big community areas. That might be the end of the matter but, on the other hand, at some stage in their children's future, the traditional Aboriginal owners will have to address the question of whether or not they want Nhulunbuy to be part of east

Arnhem as a regional town? If this becomes a regional town, it can be governed. While we are operating on the present basis, we cannot be governed. Nabalco governs us and the Territory government slips in cooperatively.

Mr EDE: Right. How do you see that developing? What would you like to see yourself as the situation after statehood?

Mr MACMICHAEL: Well, in that sense, all sorts of matters arise because land tenure becomes a major item. Whether European people are allowed to invest here and sublease land to help build the community if it isn't a mining town. The question then is whether the Aboriginal people will ever want that. These are areas which I believe need to be addressed as part of the ongoing process of constitutional development.

Mr EDE: But have you yourself formulated some ideas on these areas that indicate a direction in which you would like the committee to go, not just in terms of conducting studies but in terms of actual results?

Mr MACMICHAEL: In terms of a European approach, I would say that, from the point of view of private enterprise within this region and not from the point of view of Aboriginals, I think that Aboriginal people are looking to private enterprise opportunities in their communities to give their children some occupation and cultural sharing in exchange. If you take that as a philosophy that is going to grow and blossom, then Nhulunbuy should become a regional Territory town. In those circumstances, I would strongly support such a move particularly in light of the potential for it to become an area for visitations and tourism.

Mr EDE: So it is not particularly the core title or the base title that you are concerned about. To your mind, the difficulty relates to the terms and conditions of lease, the way in which land is leased, the term of the lease, and the way that people will be able to obtain leases. Is that the area that you are exploring?

Mr MACMICHAEL: That is a matter that should be out in the open, for sure. The basic principle is - do we want Nhulunbuy to be part of the Northern Territory community under the future constitution and or state?

Mr EDE: I think it goes without saying that we would want Nhulunbuy as part of the Northern Territory, but what has to be determined is what that would entail. There can be modes of words which can mean different things in different people's view.

Mr MACMICHAEL: In commercial terms, it means that Nabalco built the town, Nabalco managed the town, and the government assisted in providing services and infrastructure on the land leased from Nabalco. The question is whether a Northern Territory government of the future, of whatever political persuasion, will be able to govern here. It would have to go along to the Nabalco joint venture partners and the federal government with the Aboriginal traditional owners and say: 'Let's not write this place right off. People want it to grow a little'. Opportunities would need to be created so that people would have the confidence to invest in joint ventures, if you like, with the Aboriginal people.

Mr EDE: You are worried about the winding down period towards the end of the mining, the possibility that the mining company itself could make a conscious decision to amortise, for example, the housing stock by doing no more maintenance work on it and by allowing it to run down to a zero point at the end of the lease period.

Mr MACMICHAEL: Well, that could be part and parcel of it. Some people have been here for 15 years, mainly working directly for the mine. Most people in private enterprise and working for the government in semi-government authorities and service industries do not have that sort of track record of residence. It is changing all the time.

Therefore, it is up to the existing community to decide with the Aboriginals, who are the perpetual occupiers of the land and perpetual area holders, whether they want a European community as partners, so to speak, in developing this area. If so, what restraints will there be. Restraints exist in pretty real terms today. If they can change as we progress along the way to constitutional development, so they should.

Mr LANHUPUY: Mr Chairman, this committee is going round to most of the major communities and listening to people who have concerns or wish to make submissions on how constitutional development should progress. I think the committee will be splitting up in the very near future in order to visit small communities like Yirrkala, Ramingining, Croker Island, Jabiru and other small places. Certainly, what you are talking about is essential from our point of view. A great many people come onto a mining lease like Nhulunbuy because they work for a company and would like to see some sort of long-term, continuing development in the area after the life of the mine expires. That is something which I think the community will certainly take up with the landowners of the areas concerned, both here and at Jabiru, bearing in mind some of the comments that you have made. I think oral or written submissions along those lines to the committee would be appreciated. It is a sound talking point in terms of the interest and the concerns that you have expressed because of the type of land tenure that we have in an area like Nhulunbuy. From our point of view, I think that is a starting point anyway.

Mr LEO: What you would be aware of, and I am sure that most of the committee is aware of this, is that your difficulty is that, in the absence of any other industry, on the completion of mining this town will close down. All sorts of time periods have been put on that: 10 years, 20 years, 50 years, and 100 years but, in the absence of any other economic activity, the place will close down. That is a simple reality and, unless that economic activity starts to develop now, whether it involves tourism, fishing and tourism, professional fishing or whatever it may be, the town will close.

A replacement industry cannot just start up overnight. It just doesn't happen like that. It takes years to develop an industry and I think that it is important for this community. I think also that it is very important for the community of the Northern Territory generally to know whether or not the community at Nhulunbuy is perceived as an entity in its own right, that is, as a free-standing entity. If that is the case, then people can start investing with a degree of certainty that is lacking at the moment.

Mr HARRIS: Following from what Wes said, I would indicate that the committee will be identifying different groups and or people to comment on issues relating to their specific areas. I think that is important and, rather than just putting an advertisement in the paper or making an

announcement over the radio that a hearing is to be held in a specific place, we do need to get feedback from the people who are directly concerned. We will be making a great deal of effort to ensure that that does happen.

Tony, you spoke about senators. There is a feeling that, at some point down the line, we must achieve full Senate representation. Whether you like it or not, we don't want to go into the whole state issue and be seen as a second-rate state or a state that does not receive exactly the same benefits that the other states are able to have as a result of the muscle they have in Canberra or the numbers. That is very important in the political game. I think the general feeling is that we should achieve that, at some stage down the line, though not necessarily at the start; it could be phased in. But, at some stage, we would need to have full Senate representation. Would you agree with that?

Mr MACMICHAEL: I certainly would agree with you on that in principle. We are Australians who are really second-class citizens at this present time because we cannot even vote in referenda and I think the 1967 referendum regarding rights for Aboriginal people in every respect was something that we were denied. In my view, constitutionally we need to have equal representation on equal constitutions with the states. As a private person and irrespective of what views might be held over the wide political spectrum, I feel that ultimately we should have the same number of senators as Tasmania, based on some formula where we get 5 to kick off with and the other 6 after a given period of population growth.

Mr STIRLING: Following on from a few of the points Tony was making, because of the unique nature of the town, ...(inaudible) and all those restrictions, a few years ago, the federal government put a 1¢ a litre levy on petrol to generate funds for road construction during the bicentennial. That levy is to continue, and I think it is now 2¢ a litre. A place like Nhulunbuy, for example, pays that levy, yet no new roads have been constructed, will be constructed or can be constructed because of the unique nature of the lease. Now that is fine, that is how it should be, but it is unfair taxation to be paying for roads that are built between Sydney and Melbourne or wherever else.

In a Northern Territory constitution, I think specific reference has to be made to a situation like that. Indeed, that should occur with any legislation that has an effect right across the Territory but which has a unique effect here because of the special nature of this town which precludes it from receiving any benefit in return. As I understood him, Tony was making that point in respect of local government as well. In a sense, we are subjected to taxation but don't get anything back.

Mr HARRIS: Thank you. Do members of the committee wish to make any comments at this stage, before discussion moves into other areas?

Mr SETTER: Mr Chairman, I would like to comment on some of the matters that Tony raised. He did raise quite a range of issues and it is not possible to recall them all.

Tony, with regard to the matter of future development plans for Nhulunbuy, I certainly take your point, but understand that that situation is not unique to Nhulunbuy. I am sure a similar situation does exist in Alyangula and Jabiru and, perhaps at some time in the future, a similar situation will develop in other communities depending on development that may or may not take place. In my

opinion, there is a need to undertake a study of the legal arrangements relating to such communities because those legal arrangements or agreements do vary from community to community. However, we need to study those so that we understand where we might go at some time in the future with regard to negotiations with the Commonwealth and with the various Aboriginal communities involved. We need to know what the situation is and, as time goes by, to listen to and respond to the needs and the desires of people who live within those communities, whatever they might be. The starting point is to identify, by way of a position paper, exactly what those situations are from community to community.

Mr MACMICHAEL: Certainly, Mr Chairman, I would support the idea of an options paper on east Arnhem and constitutional development, indicating what are the solutions and what are the problems.

Mr SETTER: In addition, you suggested that position papers be developed on a range of issues. That has been done already on quite a wide range of issues and, in general terms, they are collated within these documents here. I don't think those documents include all of the position papers - no, they don't. But papers on issues not covered in these documents are available. Graham, perhaps you might mention the other papers that have been produced.

Mr NICHOLSON: Actually, there are 3 options papers ...(inaudible)... There is Land Matters upon Statehood 1986', (inaudible) 1987 and there is a third (inaudible) which is also from 1987.

Mr SETTER: Those papers are available.

Mr MACMICHAEL: (inaudible) ... produced which is yet to be released on the policy areas concerning a patriation land rights act.

Mr SETTER: That is the land matters paper, I think.

Mr NICHOLSON: (inaudible).

Mr SETTER: Yes. A further paper is being produced which the Chairman alluded to earlier with regard to industrial matters and I think there is one other, too?

Mr NICHOLSON: There is one covering financial matters.

Mr SETTER: On financial matters? Right. Probably, they will be released by the end of the year, or so one would hope.

You raised a point about the cost of statehood and I hasten to point out that this committee is investigating or considering constitutional development as opposed to statehood. My understanding is that the reality is that the Northern Territory is already funded on the same basis as are the states. Treasurer Keating made the announcement several years ago that that would occur and that has come to fruition in this current financial year. There is no financial advantage left in the self-government situation that existed at 1978, because the financial arrangements ...

Mr EDE: This statement has been written and authorised by the Country Liberal Party.

Mr SETTER: ... the financial arrangements that we have, to confirm what Treasurer Keating said, ensure that we are funded on that same basis as the states.

Mr STIRLING: When New South Wales and Victoria receive 80% funding from the Commonwealth government then I accept that what you are saying is correct. However, that clearly is not the case. We are not on the same basis by any stretch of the imagination.

Mr HARRIS: Can I just indicate that this is the kind of issue that I referred to earlier. The views held on them are many and varied and I guess could be argued for a considerable period of time. Those matters will be argued on the political front, but I do not want us to get into that debate here. I believe that Rick was offering his point of view.

Terry, do you want to comment at this stage?

Mr SMITH: I want to respond to Tony to start with.

Tony, you pointed out a mixture of economic arguments relating to whether the town has an economic future, political arguments about the actions of the government at that time and the attitude that that government will adopt towards this area, and constitutional arguments. Quite clearly, the major constitutional argument that you raised, as have other people, related to what is to happen on the question of land, particularly Aboriginal land, under the Territory as a state.

As I see it, there is an argument to be developed by people in this community to be addressed to this committee on the question of the status of Aboriginal land and the particular status of land in Nhulunbuy.

It would certainly be my view that the constitution that we develop for the state will not have particular clauses to cover particular situations. We will not have, for example, a section 25B subsection (3) that will apply to the particular situation here. What we want is a set of principles that can be applied across the board on the question of land. That is my personal view. The committee has not established its view on that, because you have brought something up that is new. Obviously, the committee will consider that matter. However, we would have a horrendous situation if we went through the Northern Territory hearing about people's individual situations, and then attempted to cover every one of those in a constitution. We have to come up with some broad sets of principles, and I would urge you to think about the broad principle that would be satisfactory to help ensure the future of Nhulunbuy.

The same situation applies to the comments that Syd was making. How far do you take this argument about taxation? Would you argue that, if your children were grown up, you should not pay the same amount of tax as do people with school age children because your children are out of the education system or that, if you are young and healthy, like myself, you should pay less tax because you are not using hospital services? There are all sorts of arguments that have to be considered. There is a constitutional bar at the Commonwealth level. It cannot discriminate between the states in terms of tax raising. There is no constitutional bar, that we can discover, to a state charging differential taxes within its own boundaries but certainly there may be a problem at the Commonwealth government. Of course, the petrol tax is a Commonwealth tax so that is something that you need to think about as well.

I want to semi-defend Rick for a minute if I could, on the question of funding by the Commonwealth?

Mr HARRIS: All right, all right!

Mr SETTER: Thank you!

Mr SMITH: When Keating, and Rick Setter, make the statement that the Territory is funded on the same basis as are the states, they are not saying that each state gets the same proportion. There is a formula worked out by an independent Grants Commission which takes into account the needs of the states, the population of the states, etc, etc and works out how much money they are entitled to, and that is the argument. It is not a question of each receiving the same percentage but what is received according to the formula that has been worked out by the independent body. That is the amount of money that we get.

I don't quite subscribe to Rick's view that we are being funded at a similar level at present. There are still a couple of uncertainties about that level. One of the uncertainties is that Keating has said that the Territory really did get \$40m too much but that the Commonwealth will not take it off us this year. He has not said that to any of the states. But, certainly it is the Commonwealth's intention - and it doesn't matter particularly whether it is a Labor government or a Liberal government federally - to fund us along state lines, and I think that will continue. It is one of the factors that we do have to take into consideration when examining this question of constitutional development.

Mr HARRIS: Coupled with that of course is that we have the disadvantage of not being on the Loans Council and others in making the decisions.

Mr SMITH: Oh, yes, yes!

Mr HARRIS: I am getting my bit in too!

Does any other member of the committee wish to comment before we move on? Does anyone else wish to make a comment on any issue that has been raised or speak on any other issue?

UNKNOWN: I have just 1 question, Mr Chairman. I haven't had a good look at those documents, but is there anything in there which indicates the cost of setting up statehood for the Territory?

Mr HARRIS: No.

UNKNOWN: I imagine it will be a very significant figure. How would it be funded?

Mr HARRIS: As has been pointed out, there are a couple of papers which are still to be distributed. Those are issues that have to be considered but, as Terry said, we are looking at the principles on which to base our constitution. The other matter I should mention is that all of this will go back to the Assembly. The step in the process is that, once we come up with what we believe is a reasonable constitution, that will go to the Legislative Assembly for debate. I guess those political issues will be raised at that stage..

Mr EDE: It is very difficult to crystal-ball this sort of thing as far as financing goes. We are hoping to be able to get down a set of principles and to be able to get some variations on that that will enable us to see just what the financial implications of statehood are. Everyone recalls Everingham's statement that self-government would cost us a packet of cigarettes and a can of beer a week. If they have a look at their electricity bills now, they will see that either beer and cigarettes have gone up or that statement was not quite accurate.

Obviously, even when we have a picture of those implications and they indicate that our situation when not a state is like this and if we were a state it would be the same, that would not take into account the ability of the Northern Territory government of the day to decide, for its own reasons, that it will increase charges or taxes as they increase locally. So, while we can say that statehood of itself won't necessarily cost you an extra dollar, it may cost you that dollar if the government of the day decides that it is going to.

Mr HARRIS: Another issue which people may like to comment on is that of land rights and whether that subject should be patriated back to the Territory should we become a state. These are some of the issues that we will be identifying people to make comment on at a later stage. Whilst we are here, does anyone would wish to comment on that particular issue?

UNKNOWN: I thought it was heartening to read recently that Mr Coulter at least thought the NT Land Rights Act was workable and we look forward to his putting very solid effort into making it work ...(inaudible)...

Mr EDE: We found political agreement on a subject, and put it all behind us.

Mr SMITH: I think it is fair to say that, if we are to become a state, there is really not much choice. Aboriginal land rights has to become a state responsibility. I do not think there is any point in hiding behind the idea that you can have a state without it having control over its land. That would be different to anything that has occurred in Australia's brief European history.

Really, the question is not whether the responsibility should be transferred, in terms of the present discussion on constitutional development, but the terms on which it should be transferred. In other words, there is this concept of entrenchment. Should there be special provisions in the constitution governing the matter of Aboriginal land rights which will make it harder to change provisions concerning land rights than relate to other areas covered in the constitution? For example, under the Australian Constitution, of course, you have to have 50% plus 1 in 4 of the states of the people supporting it. In the Northern Territory constitution, I would expect that, for most issues, we would settle for 50% plus 1 of the people who vote, or perhaps the people who are eligible to vote but, on important questions like land rights questions, we might want to make it more difficult than that. It might be decided to make it 60%, 65% or 70%. That is the sort of question that we are particularly interested in exploring.

Mr Chairman, Brian is something of an expert on what has occurred in Papua New Guinea and, with your concurrence, I might ask Brian to make some comments on that. There have been some entrenchment-type provisions put in on important issues there. I cannot recall the phrase now.

Mr EDE: They have a system of what they call organic laws. These introduce a degree of difficulty in changing the constitution. There are special organic laws and these require more than a simple majority of the parliament to get through. There are degrees of inventiveness, if you like, or degrees of difficulty in maintaining those principles. For example, if we look at systems of provincial government, in Australia, our states exist in their own right whereas, in Papua New Guinea, the provinces, which are the equivalent of our states, exist because of an act of the federal parliament, but that act is not an ordinary act - it is an organic law. It requires quite a degree of difficulty in changing it. The lives of these people are governed by the constitution, but the way in which they exist is written into an organic law.

We could have a system like that. For example, we could establish the principle of ownership of land and guarantee in the constitution that land shall not be taken off somebody, and we may decide then to incorporate many more of the principles that involve land rights, which could be things like vetos on exploration, the distribution of royalties etc, into an organic law. Then the ordinary law of the parliament of the day may provide for other issues which basically represent the nuts and bolts of how the act operates, who appoints commissioners and who operates where the land councils report back to.

I would like to make a point about what Terry had to say concerning the need to - 'patriate' is a non-word ...

Mr HARRIS: Devolve!

Mr EDE: Devolve is the word! Terry spoke about the need for responsibility for the federal legislation governing Aboriginal land rights in the Northern Territory to be devolved onto the Northern Territory parliament. It is an anomaly, as things are at the moment because, if that were to stay with the national parliament, we would be the only state where that was the situation.

Of course, there is another possibility. At some stage, the federal government may decide to go back to a position that it held some time ago of legislating for national - either uniform or non-uniform - land rights. If we did get to that situation, of course, that would be different again in that every state would have its land rights enshrined in a piece of legislation of the federal parliament. If that situation arose, it might then just be a matter of us saying that we would like to have complementary legislation in the Northern Territory which, in fact, might be word for word what the federal legislation was. Or we might decide that the federal legislation did not go far enough in certain areas and that we thought that a much more practical advantage to people could be gained by going further. We would have the ability to do that under statehood, but we would not have the ability to resile from a position which the federal government had taken.

Mr HARRIS: Does anyone wish to make any further comments? Do members of the committee wish to say anything more at this time?

That being so, I will thank you very much for your attendance and we hope to see you again in Nhulunbuy in the not-too-distant future. Thank you for attending.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

ALYANGULA — Tuesday 2 May 1989

PRESENT:-

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms Kay WRIGHT
Ms Julie WADDY
Mr Alan WRIGHT
Ms Susan GILMOUR
Mr Colum DONALDSON
Dr Dan NAIDOO

NOTE: This is a verbatim transcript that has been tape-checked.

Issued: 21 August 1989.

Mr HATTON: Thank you for coming along tonight. My name is Steve Hatton. I am the Chairman of the Select Committee on Constitutional Development. On my right is Col Firmin, the member for Ludmilla, a member of the committee. Wesley Lanhupuy was to be here but he has been required to attend a funeral on Elcho Island today. He was unable to leave, as I am sure you would appreciate, and he sends his apologies.

As you will see from the booklet which has been distributed, this is a unique committee of the Assembly in that it has equal representation from both the CLP and the ALP, with 3 members from each side of the House. It is the only committee of the Assembly which has ever had equal numbers from both parties. Normally there are 3 members from the government and 2 from the opposition. Since its inception, this committee has worked on a bipartisan basis and striven to maintain a bipartisan approach to the questions we are dealing with. I must say that this is one case where party politics has no place nor has it had any place. That approach has been actively followed by both sides of the Assembly.

You have heard a lot of talk over the years about statehood. Some people are of the view that we should strive for the granting of statehood as soon as possible. Others are a bit nervous about it and believe that it should be held off for a while and some people are totally opposed to it at present. There is certainly a lot of apprehension in the community as to what it means. You can feel comforted by the fact that I am not going to ask you whether or not you support the move to statehood and, in particular, statehood in the immediate future. That is really a separate question to the work of this committee.

There is no doubt that this committee's work is related to the eventual attainment by the Northern Territory of constitutional equality with the rest of Australia. That certainly is the long term goal. However, before you can even start to think about whether or not we should become a state and under what conditions, the first thing you should ask yourself is: what sort of place do you want the Northern Territory to be? How do you want it to work? What sort of ground rules are you going to set for society? How do you want your parliament and your courts to operate? What will be the rules in this new society that we are going to move into? Until you have worked out the answers to such questions, you really do not know what you are walking into when you walk into statehood.

The rules are set by writing a constitution, just as they are when you set up a club, a local government authority or community government authority. You have to set the rules down and you do that in a constitution. In this situation, the constitution stands as a fundamentally important document. It is the people's law. It is where the people set down the rules for government, for the courts, and where the people enshrine the rights or freedoms that they regard as so fundamental that no government should have the power to interfere with them.

You need to appreciate that, in the absence of a constitution, governments can do what they like. A constitution enables the people to put a fence around what the government can do. It sets the focus and the direction and puts the limits on what government can do. It does not give power to government; it limits the power of government. In the absence of a constitution, governments have unrestrained powers. For example, Great Britain does not have a written constitution. Custom and practice have evolved over the years and can be adjusted as society changes and different points of view are resolved through the courts and the parliament, but there is fundamentally no

restriction on what the British parliament can do, subject perhaps to the Magna Charta. Mr Nicholson might be able to assist here. I believe that the Magna Charta does not limit the British parliament as such but, rather, limits the Crown.

Mr NICHOLSON: The theory of British constitutional law is that the parliament has unlimited powers.

Ms WRIGHT: How is it that the New South Wales Attorney-General has the power to say, as he has done recently, that a prisoner in jail must serve an extra sentence?

Mr NICHOLSON: That must be pursuant to some statutory provision in New South Wales.

Mr HATTON: If I can pick up that point, Australia is a constitutional democracy, as are Canada and the United States. Each has a written constitution that limits the powers of government. In the federal sphere in Australia, those powers are limited, with residual powers held by the states. As to exactly where the balance lies, many a lawyer has made a lot of money arguing, as they will no doubt continue to do in the future. Basically, however, there is a constitution which sets out what the federal government can do and what it cannot do.

Each of the states also has a constitution. Most are leftovers from the colonial constitutions established in the last century but they do impose varying degrees of limitations on what the various state governments can do. The Northern Territory, however, does not have a constitution at all. The closest we have is a federal act of parliament called the Self-Government Act which, for us, is like a pseudo-constitution. Because we are a territory, the limitations on the federal government in relation to us are non-existent. Section 122 of the Australian Constitution effectively says that the federal government can deal with the Northern Territory as it pleases. Most of the individual protections of the Australian Constitution do not apply to citizens of the Northern Territory because they specifically refer to the citizens of a state. The Commonwealth is a federation of states and we stand outside that. Thus, for example, it has been held by the High Court that the federal government has the power to acquire your individual property without compensation and without reason. That cannot occur in the states because the Australian Constitution says that the federal government can only acquire property for Commonwealth purposes on just terms, which means that it has to pay for it. There has to be a justification for any compulsory acquisition.

Ms WADDY: Does the Land Rights Act override that?

Mr HATTON: The Land Rights Act is an act of the federal parliament and, whilst I do not believe it will happen, what governments can give they can also take away. It is possible for the federal government to repeal the Land Rights Act and simply resume all that land as Crown land.

Ms WADDY: But so long as the Land Rights Act is in force, it cannot take Aboriginal land?

Mr HATTON: It would have to repeal the act.

Ms WADDY: So as things stand at present, it can take land from Europeans but not from Aborigines?

Mr NICHOLSON: It would have to pass an act to do it.

Ms WADDY: The Commonwealth is bound by the Land Rights Act.

Mr HATTON: The Commonwealth can amend the act.

Mr FIRMIN: Ms Waddy is correct. Under the Australian Constitution, land can be taken from the ordinary white citizen of the Territory with no restitution if that is the way the Commonwealth wants to act. In respect of Aboriginal land, however, it cannot do that.

Mr HATTON: Unless it amends or repeals the Land Rights Act, which is the Commonwealth's own legislation.

Mr WRIGHT: It is inalienable freehold title as opposed to freehold title.

Mr HATTON: But it is only inalienable whilst that legislation is in force.

Mr WRIGHT: Yes, although it would take a courageous government to repeal it.

Mr FIRMIN: What is being said, however, is that an inequity exists.

Mr HATTON: Although I would not suggest that this is likely to happen whatever government is in power, the point I have made to communities is that it is technically possible for the Land Rights Act to be repealed. For example, if it was expedient in the context of anti-Aboriginal sentiments in Sydney or Melbourne, and appeared to be advantageous or imperative in terms of winning government, it could occur. A party which promised to repeal the Land Rights Act could do so if it won a majority in both federal Houses. There is no entrenchment or guarantee which protects land rights.

Equally, the very existence of democracy in the Northern Territory depends on a federal act of parliament. Although I do not think this would occur either, it is possible that, by amending a regulation to an act of parliament - which does not even have to be debated on the floor of the House - the Commonwealth could wipe out the entire Northern Territory education system.

Mr WRIGHT: A political party could promise to wipe out taxes in order to win government on the basis of votes in Sydney and Melbourne but I do not think that will happen.

Mr HATTON: I am not saying that such things will happen. I am simply trying to explain the constitutional position of a territory versus a state. By repealing an act of parliament, the federal government could remove any right to political representation in the Northern Territory. There is no constitutional guarantee of your right to have your own government. That is the difference between a state and a territory.

Mr NICHOLSON: It is not purely an academic question because there have been examples where the Commonwealth has passed legislation to acquire property in the Territory expressly excluding any compensation.

Mr WRIGHT: One involved a station.

Mr NICHOLSON: Yes. Another involved mining interests. There was also a small acquisition at Ayers Rock where the boundaries were changed without compensation.

Mr WRIGHT: I am not suggesting it is academic but it would perhaps be likely to happen in those areas where ...

Mr FIRMIN: Actually, it happened in Darwin. I was a landholder in the 32 mile acquisition area back in 1972 and we were told that all our land was to be acquired. We made representations to the federal government about compensation. The minister came up and agreed to consult with us. He went back to Canberra and, in the last sittings of the House, he tabled the acquisition document without talking to the land-holders. Parliament rose for 30 days and the law became an act without any debate whatsoever. Because it had lain on the table for 30 days, it became law. In the January of the following year, we found that all of our land had been taken. It took 3 years to obtain any compensation and we got 1% interest on what the Commonwealth determined was the value of the land 5 years before.

Mr WRIGHT: I am suggesting that they might do it to small groups but would not do it where large groups would be affected.

Mr FIRMIN: That was a large group. Quite a number of people lived in the 32 square miles of the Darwin area. In fact, there were about 200 landholders in that region.

Mr WRIGHT: I am talking in relative terms. The Land Rights Act was introduced into the Territory because of the numbers of people involved. It was a vehicle to see whether land rights could be put in place in the context of fairly widely held views that they should be granted, and I do not believe that those land rights will be removed. If, however, you are talking about a couple of thousand people, that is not many in the context of the total Australian population.

Mr HATTON: As long as the views of the broad Australian community are in sympathy with or are not antagonistic towards that legislation, I agree that it will continue. I am not suggesting otherwise. I have tried very hard to emphasise the fact that I do not believe the act would be repealed, whoever was in power. I just do not believe that that would occur. My point is simply that there is no constitutional impediment to that happening and that the fact that such things are decided only by an act of the federal parliament helps to illustrate the difference between a state and a territory.

In the Northern Territory at present, the rules that determine the rights of government are set up under a federal act of parliament. They were given to us in the Northern Territory (Self-Government) Act. They determine the shape of the parliament, how we go about setting up electorates, voting procedures, who has the right to vote in elections, who has the right to stand for parliament and so forth. The question we are now asking people is: how do you want the Northern Territory to operate in the future? What sort of a parliament do you want? How do you want governments to be formed? What will be the role of the Governor or the Administrator? How will the courts relate to the parliament? Where do powers reside in these various elements of government? At present, an act of the federal parliament determines these things.

We are asking you about the directions which you consider to be appropriate for the Northern Territory society of the future. What sort of fundamental rights should be protected from governments of any persuasion? Should the right to vote by secret ballot be constitutionally protected so that no government can remove it? If such a right is not entrenched in a constitution, it is possible for a government to remove it.

To use another example, do you want to entrench the right of freedom of religion? In discussions with Aboriginal people, I have raised the issue of whether there should be some constitutional entrenchment of land rights or an entrenchment which protects Aboriginal religion, culture, language or law. Those things are really important to Aboriginal people in terms of preserving their culture, law, language, history and identity. How can we do that whilst ensuring that Aboriginal and non-Aboriginal society can coexist with some sense of mutual respect and equality?

There are many hard questions and there will be many arguments between now and the day we find the answers. However, as a society, we must come to terms with the reality of our environment. We must find answers to these questions, not just in our own interests but in order to create a society that future generations will be proud to live in. It is not just an opportunity. I would put it to you that, in fact, we as a society have an obligation to deal with these matters. If we fail in that obligation, if we walk away from this job, we will hand on to future generations the problems that we now have and possibly even worse problems. That will come about if we do not accept our responsibility to set down the ground rules for our society in the future. We have a unique opportunity in Australia but, as a generation, we also have a very heavy responsibility to discharge.

Until we have done this, we cannot properly address the question of when we should achieve statehood. First of all, we have to ask ourselves what sort of state we want. That is the question we are putting to the community. We are not expecting people to have the answers today. We are putting the questions to you and saying: 'Please take the opportunity to start reading about them, thinking about them, talking about them and getting your ideas together'. We have also produced a summary of questions which address one issue at a time. For example, in respect of the legislature, do you think that we should have 1 House or 2 Houses of parliament, a unicameral or bicameral system? Should we have an Upper and Lower House?

Ms WRIGHT: What does the Hare-Clarke system have?

Mr HATTON: That is the Tasmanian system of voting. It is an option that you may wish to write into your constitution.

Ms GILMOUR: That option was not mentioned in the booklet.

Mr HATTON: No. I do not think we have mentioned specific options.

Ms GILMOUR: I think you said that something was agreed.

Mr HATTON: As a committee, we would recommend single-member electorates but the Hare-Clarke system involves multi-member electorates.

Ms GILMOUR: The Tasmanian system has multi-member electorates.

Ms WADDY: How does that work?

Mr HATTON: They have 5 member electorates.

Ms GILMOUR: It is supposed to be the best system in the world.

Mr FIRMIN: It is very complicated.

Mr HATTON: It depends whether you come from Tasmania or not in my view.

Ms GILMOUR: No. It was an independent study.

Ms WADDY: How do they get 5 members?

Mr HATTON: Can I give you a response to that? The Darwin City Council, for example, has multi-member wards. Each ward elects 3 aldermen. It sounds very good because it means there are fewer electorates with several alderman representing each. However, when a problem arises, which alderman do you nail?

Mr FIRMIN: I can tell you. I was an alderman on the Darwin City Council for 8 years - 3 elections. I reckon that I carried a couple of my colleagues for about 4 of those years because I was the only one that seemed to be accessible and the only one that seemed to want to do any work.

Mr HATTON: You have 3 to choose from which also means that they have 2 others to blame. There really is a major problem trying to pin down an alderman on a particular problem within the ward. In a single-member electorate, there is no way the elected representative can escape.

Mr FIRMIN: The buck stops.

Mr HATTON: There are different arguments for and against. Whereas the multi-member electorate has the potential to get a more balanced proportional representation in the parliament, it also provides a better avenue for minority groups to enter parliament and instability may flow from that. One could have a great time arguing about such issues over dinner one night.

Mr WRIGHT: If an electorate like Arnhem is represented by a single member who happens not to be of the government party, it does not really do much for the electorate. It is very difficult to get things done.

Mr FIRMIN: Correct. It can happen that way.

Mr WRIGHT: It is one of the disadvantages of the current system. I am just following up Steve's reasoning, and pointing out that if your member is not of the government party it may not be as easy to get things done as it might be otherwise.

Mr FIRMIN: That could be because he just does not want to listen. We don't actively work against the local sitting member. If a dishonourable state of affairs is brought to the government's attention and if something needs to be done, we get on and do it, I can tell you.

Mr HATTON: We need to back off a bit here. This is a committee meeting, not a government meeting. I have to draw a very careful distinction between our role as members of a select committee and as members of a government. I have an added responsibility because members from the opposition have not been able to be present. I do not want to take any political advantage of that situation.

Ms WADDY: That is right. Fair enough.

Mr HATTON: I think that is important in terms of the work of this committee. I am happy to debate those issues when I close the meeting.

I suppose it is a good example of how you can get into a debate. The other question which arises is whether that sort of detail - the question of multi-member or single-member electorates - should be determined in a constitution, or whether it should cover the really important things such as who has the right to vote, who has the right to stand for parliament, how many Houses of parliament and so forth. The question of multi-member or single-member electorates could be dealt with under an electoral act.

Ms WADDY: But you do not necessarily know what is important in advance.

Mr HATTON: No, but we can spend a long time talking about it as a community. We have put the various options in the discussion document. One of the questions you need to decide is the extent to which you want to entrench detail in a constitution. Once it is there, the probability of changing it is very minimal. You have to find a balance between the stability of foundation stones versus the flexibility to move with changes in society. For example, the demographic composition of the Northern Territory could change. Once you lock something into a constitution, change could be very difficult in a situation such as a changing demographic structure. The result could be a very unhealthy direction which is extremely difficult to alter.

Mr FIRMIN: There are 3 different levels. Firstly there is the constitution, which is the foundation stone. Then there is legislation, which provides external packaging and flexibility and, lastly, there are the regulations which allow for the day-to-day operations. You do not want to put a vast number of nitty gritty little details into a constitution because, whilst they may be appropriate today, they may not be appropriate in a few years time. Constitutions can only be changed by referendum and that can be a difficult process.

Mr WRIGHT: I have a couple of questions. Firstly, do you have any vision of a time frame for the development of the constitution and the next step?

Mr HATTON: Yes, I have, but please accept that we are very deliberately not setting time limits on what we are doing. It is more important to do it properly than to do it within a particular time.

Mr WRIGHT: I was actually leading up to another question. You have talked about the importance of a constitution and nobody would disagree with that. You have also spoken about how, once it becomes part of our life, it could be very difficult to change. It seems to me that, when such a small number of people turns up to this meeting on a subject of such importance, there is a great need to educate the community about the things which are being discussed. I would like to

ask how you propose to get information to the community and how you propose to get debate going. Obviously, you do not want people just to be disinterested. The questions posed in the discussion document and in your remarks so far are highly complex and people need to be well informed before they can have an input. There would be very few places in Australia, if any, where people have had the opportunity to take part in this sort of exercise in the last 70 or 80 years and people are just not geared for it.

Mr HATTON: Basically, it has not happened for 100 years.

Mr WRIGHT: I would think that your committee would have a big responsibility to work out mechanisms for disseminating information and getting debate under way.

Mr HATTON: We are always examining those mechanisms but let me explain how we are going about the process of developing a constitution. If this committee has any say in it, and I think it does have a fair say, this constitution will be written by the people, not by the politicians. We are approaching our task by moving around the Northern Territory. We are visiting 59 communities on this particular round. We are simply talking to people, sometimes in small groups and sometimes in large groups of up to 100 people. We are explaining the process that we are going through and asking people to think about what we are doing.

The committee is already discussing backup systems such as newsletters, perhaps videotapes, and other materials in local languages. This trip has certainly confirmed that English is hardly spoken at all in many Aboriginal communities, where 80-90% of the people speak their own language and have no television, radio or other forms of communication. We will have to find mechanisms to reach such places.

In addition, we are looking at ways of exchanging views between communities, perhaps through newsletter updates. At its next meeting, the committee will be discussing the possibility of making a documentary type video presentation to be circulated in communities. It would explain what a constitution is and set out some of the issues that are involved. Video is a very significant way of disseminating information around the Northern Territory and it could be very useful in this case. So we are looking at the possibility of getting programs onto television or through the video networks, in addition to newsletters. We are also considering picking up particular issues and asking particular questions about them to get people in the community to start thinking about them - bite-sized chunks of information for people to get their teeth into.

At the end of this process, later this year or early next year, we will be coming back saying: 'Well, now is the time for you to tell us what you think. You have heard and you have had a chance to read. Now we really want you to have your say'. That is what these posters are about. We would encourage you to put them up around the town to put the concept in front of people, to tell them what is happening and to encourage them to find out about it and have their say. When we come back we will be asking people, individually or in groups, to make submissions on the constitution. These would set out the things people believe should be included in a constitution. We will gradually collect that information from throughout the Territory. It will then be our job to distil that input and to come up with a constitution which, in our opinion, best reflects the views of the community. We will not, however, be writing the constitution. That will simply be a draft constitution, a working document.

Ms WADDY: In other words, people can say that they do not agree with particular aspects.

Mr WRIGHT: I just wonder how you can stimulate more interest, discussion and debate in the community so that you get the input from the people. That is important. Otherwise, the politicians will make the decisions.

Ms GILMOUR: Or else you will just get a 'No' vote.

Mr WRIGHT: It will happen but it will not happen the right way unless people are well-informed.

Mr HATTON: That is where the second question is really important. That question concerns the formation of a constitutional convention, which is like a giant drafting committee of representatives of Territory people. How should that convention be put together? How do we ensure that we get a group which is large enough to reflect the diversity of views in the Northern Territory? How do we ensure that people are confident that the views of their communities are represented whilst confining the convention to a size that is not unwieldy. The putting together of this convention will be one of our major tasks because that convention will consider the work of this committee and all the submissions received by it. The convention's job will be to go through our work, accept it, reject it, amend it, vary it and work through to eventually produce a proposed constitution. That is the second of 3 stages.

This committee will do the background work and call for submissions. It will then produce a draft constitution and a process for forming a constitutional convention. If that is accepted by the Legislative Assembly, the constitutional convention will be formed and will meet until its job of drafting a proposed constitution is complete. When that is done, the proposed constitution will be put to a referendum of the Northern Territory voting population. If the population accepts it, that will become the constitution. If the people reject it, it will go back for further consideration. It may be important, therefore, in the processes of the constitutional convention, to have a series of sub-referenda dealing with specific subjects. Rather than having the entire constitution accepted or rejected, the various parts could be considered separately and, hopefully, at the end of the day the result would reflect the wishes of the people.

Mr FIRMIN: Steve, I would just like to go back to Alan's earlier point. I take your point, Alan. How do you get people interested? Do you have any ideas?

Mr WRIGHT: We could have a constitution club on the island, a focal point people could turn to. Are we going to see somebody from the committee once every 2 years? That would be no good. Interest would wane. To keep interest alive, you need a local focal point.

Mr HATTON: I think that is a tremendous idea.

Ms WADDY: I would just like to comment on something rather interesting. The last meeting on this subject, the October or November meeting, was very poorly publicised. This meeting was well-publicised in the newsletter, *The Echo*, and so forth. However, about the same number of people have come, despite the fact that people have known about the meeting for weeks.

Mr FIRMIN: It has been on Imparja.

Mr WRIGHT: I think the constitutional goal is too far down the track for people to be interested in it. You really have to get some information out.

Mr HATTON: But at least people know that there is some work under way towards the development of a constitution.

Ms WADDY: Right, at least that stage is happening.

Mr FIRMIN: I think the message will get across. Let me just tell you what happened in Alice Springs. We attempted to have a meeting there on a Friday evening in a 2-week visit to the region. Only 4 people turned up. It was another wet night.

Mr HATTON: And they only turned up after we had decided that no one was coming.

Mr FIRMIN: There was some bad publicity in the newspapers over the next couple of days. There was some confusion in relation to timing.

Mr HATTON: The Peace Council lambasted us because we were not there to hear its submissions.

Mr FIRMIN: Its members arrived at 7.15 pm or so. Our people had been there since 5 pm but there was no one there when the Peace Council people arrived. We decided to hold another public meeting on the following Thursday. The night before the meeting, rather than accompanying the committee in its sessions outside Alice Springs, I stayed in town and contacted as many community interest groups as I could get hold of. I spent virtually all day on the telephone and, by the time I had finished, about 50 people had told me that they would definitely attend the meeting and would probably bring other representatives as well. Altogether 9 people turned up.

Mr GRAY: I think it was 13

Mr FIRMIN: That is right. The 4 girls from the Tourist Commission came in. They were not among those I had spoken to during the day. I had spoken to organisations like the service clubs, church organisations, the Small Business Association, the Master Builders Association and so on.

Ms GILMOUR: (inaudible).

Mr HATTON: Those that did attend went away saying: 'Hey, this is important. I want to find out a bit more about this'.

Mr WRIGHT: But they probably do not see it as important as the ABC News at 7 pm?

Mr FIRMIN: That is probably right.

Mr WRIGHT: That is the time when the meeting is held. You have to think about little things like that when you are organising things.

Mr FIRMIN: You have to find a night which is not basketball night or card night, when there is nothing special on television and so on.

Mr WRIGHT: It is hard to get people along to a meeting if they have to make special arrangements for looking after their kids and so on.

Ms GILMOUR: You are obviously distinguishing the constitutional work from the statehood movement and that makes it more difficult to get people interested. If it was linked to the statehood movement, people would probably take more interest because they relate to the idea of statehood and unifying over a long period of time.

Mr HATTON: We thought about that. However, our view was that combining the 2 issues might polarise the community into those who already oppose statehood versus those who think it might be a good idea. That would be a difficult situation to be in.

Mr WRIGHT: I would be looking to try and get some organisation, such as a constitution club, which would provide information to generate some community interest rather than taking any particular stand. There is no local government here. Local government is based on private enterprise and there is very little private enterprise here. Whilst you will not get that sort of interest, there are lots of people here who would contribute if they understood what was happening and the processes which will occur.

Ms WADDY: But at least there is now a vehicle for getting information into the community at a wider level. That is through The Echo. The newsletter has been upgraded since the committee was here last and there is an opportunity for some meaningful information, via press releases and so forth, relating to particular issues. A well-worded statement in The Echo will reach a considerable number of people.

Ms GILMOUR: Since it is such a long-term objective, perhaps the education system could be accessed.

Mr HATTON: We are accessing the education system.

Ms GILMOUR: The adult education system.

Mr HATTON: We are working right across the education system including the schools. The process of constitutional development is being built into the SACE program at schools. Explanations of the workings of parliament and so on are now part of the SACE curriculum and the issue of constitutional development is being incorporated in the SACE program for secondary schools. We have had approval from the Education Department to talk to senior students in high schools on a bipartisan basis. We have already had a couple of very successful meetings in schools. Literature is being sent to the high schools, particularly for the SACE faculties. We are using the education system. We have received some information in relation to adult education and we will be following that up further when we get through the end of this round of trips.

Ms WADDY: You have to have the interest before you get the participation in any sort of formal education.

Mr HATTON: It is very hard to get the interest until people know that something is under way. If I can get you to look at the issues and say: 'Hey, something pretty significant is happening and it is not the sort of thing I want to miss out on being involved in', I will have you sufficiently encouraged to take some steps to become better informed. If I can do that, I have made a step in the right direction.

Ms WADDY: Whoever came here last time succeeded in doing that.

Mr WRIGHT: You have a tough job ahead. You have to sell it. You have some information.

Ms WADDY: There are the 2 or 3 of us who were here last time, and we are back again.

Mr WRIGHT: How you sell that information is what counts. You can have guest speakers at community-based organisations. You have to make it interesting. Public meetings will attract a few people like us but if you really want to get information into the wider community, you have to look at ways and means of making it interesting.

Mr FIRMIN: We are looking at the Rotary Clubs, the Lions Clubs, the Penguins, the Quotas and so on.

Mr HATTON: We are looking for speaking opportunities.

Ms WADDY: You could provide something for The Echo, following this meeting up fairly closely, saying: 'Look, you have missed out on an opportunity but this is what we are on about and this is what we are after'.

Mr HATTON: And this is where you can get more information.

Ms WADDY: Yes. You also need to sell the fact that this is a historical first, not just in Australia but elsewhere. I think that approach would really help to sell the idea and get people interested.

Mr HATTON: It is a unique opportunity in Australian history.

Ms GILMOUR: Wasn't it this time last century when people started working on the federal constitution?

Mr NICHOLSON: It was 1893.

Mr HATTON: It came into force in 1901 but work actually began in the 1880's. It was 13 years in the making. Remember, too, that the people who wrote the federal constitution were basically politicians.

Mr FIRMIN: Well, they were the colonies' representatives.

Mr GILMOUR: It wasn't as bad as the formation of the United States Constitution, where there was a great amount of politicking.

Mr FIRMIN: It was the colonies trying to sort themselves out.

Interjection: What's your name, O'Malley?

Ms GILMOUR: What was that?

Interjection: What is your name, O'Malley?

Mr FIRMIN: King O'Malley.

Ms GILMOUR: You could even use that sort of historical information in an education program, along the lines of: 'This is how the federal constitution was made. That is what happened then and this is what we are doing now'.

Mr WRIGHT: Perhaps you can get people who have a lot of public appeal to become the full bottle on this and get them to give sections at the CWA, the Lions clubs and so forth. I am thinking of people like Monte Dwyer the weather announcer, people with some crazy charismatic appeal. Peter Forrest, the historian, would be another good one. Any number of things could be done but the distances involved certainly present a problem, as do the costs.

Mr FIRMIN: Monte has already given us a burst during the weather report one night. He said something like: 'I hope the constitutional development committee is getting along all right out there'.

Mr WRIGHT: All I was saying is that those people are listened to. They have more public appeal than you and I. Who is going to listen to a dry old politician?

Ms WADDY: In this context, though, it is politics without point of view. In other words, education.

Mr HATTON: This is the ultimate politics, isn't it? It is not party politics.

Mr WRIGHT: People will identify this with politicians if it is delivered by a politician.

Mr DONALDSON: What are the main areas of concern that have been raised?

Mr HATTON: They have varied greatly. We have received individual proposals. There is no doubt that, within Aboriginal communities, the significant issues are land rights, sacred sites, protection of Aboriginal law and culture - broadly speaking, the human rights issues. Those issues have all been raised by every Aboriginal community we have visited. The emphasis may have differed from one place to another, but those issues have always been there. In the non-Aboriginal communities, equality has been the main theme.

Actually, when you look closely at what both communities are saying, it is the same thing in different words. Aboriginal people are saying that they want protection so they can get equality. An interesting debate occurred at Utopia, which is a very traditional community. There is no central community and people have really strengthened their traditional way of life. One elder suggested that Aboriginal people should be in their place and the white people in theirs, and a giant argument broke out. People were saying: 'No. We want to be side by side, not one in front of the other'. That

tends to be the very firm view. Aboriginal people are saying: 'We are not going to be subsumed by you. We do not want to be subsumed by you nor do we want to subsume you. We have to find a way of existing side by side and going forward down the same road. We want to have our own culture and our law and find a way of working together'. That is the challenge for people in the Northern Territory. The white community is saying exactly the same thing. People do not want to wipe out Aboriginal culture but they do not want to feel that Aboriginal people have rights over and above their own. They want balance.

Ms GILMOUR: That raises an interesting issue which has occurred to me. How does multiculturalism fit with the recognition of Aboriginal culture? The way it works at the moment is that there is recognition of a dominant language and a dominant way of doing things. The recognition of Aboriginal culture and language will almost be an exception to multiculturalism because, when people from other cultures come to this country, they do not have the right to be taught in their own language or to use their own system of law.

Mr HATTON: There is a need to come to grips with the unique circumstances of an indigenous Aboriginal people.

Ms GILMOUR: But it does not sit easily with equality, does it?

Mr WRIGHT: There is a more diverse gap between our culture and Aboriginal culture than there is between our culture and many others.

Ms GILMOUR: There is a distinction, though, between the Aboriginal culture which already existed in this country and the cultures of people who have come to it as migrants. Such a distinction might have to be made in the preamble to the constitution so that it is clear that Aboriginal culture is not just another culture in the multicultural society, and that it has a special status.

Mr HATTON: Yes, that certainly relates to the question of a preamble. I am certainly not throwing the answers on the table. I am just saying that we have to wrestle with these issues as a society and as a community because, if we do not resolve them and find satisfactory solutions to some of the problems, we will leave an inheritance of conflict.

Ms GILMOUR: In drawing up its constitution, is the Northern Territory able to acknowledge the pre-existence of Aboriginal people in a way that Australians as a whole have not? Is that possible?

Mr FIRMIN: It is possible but you would need to get it right.

Mr HATTON: It is possible. If there was a way of doing it without creating problems in terms of dealing with some of the radical people, without walking into a morass of international law and massive reparations for the events of the last 200 years, it would be done tomorrow. That is the problem. I do not think that there is anyone who does not understand that Aboriginal people were before we came and that they have their own language, culture and religion. That is not the issue. The issue is whether we do what Mr Mansell says we should do and pay 25% of GDP forever in compensation for taking land from Aborigines in the last 200 years.

Ms WADDY: I do not think Aboriginal people as a whole are wanting that.

Mr HATTON: I agree, but that is the potential danger of a preamble. If you can find the answer to that problem, you will resolve it. I do not know any non-Aboriginal person who does not say: 'Yes, they were here first. They had their own language, their own tribal areas and their own rituals. I understand that and, yes, they were badly treated. But I cannot change that. What can I do from now on?' That is what the non-Aboriginal community is saying and I think that, basically, Aboriginal society is also saying that. How do we put that together?

Ms GILMOUR: It seems that the value of preamble would be as a statement ...

Mr HATTON: A statement of recognition.

Ms GILMOUR: ... that would be a greater influence on policy-making than many things. When there is contact between white Australian institutions and Aboriginal culture, such a statement could influence the policies that govern those institutions. I am thinking in terms of departments like health, education, and all the other arms of a state government. If the preamble to the constitution stated that Aboriginal languages had to be recognised, there would have to be bilingual programs in the schools. You cannot confidently say that you recognise Aboriginal languages if you force Aboriginal people to learn English. The same goes for a lot of other things.

Mr DONALDSON: I would be very reluctant to do that in a constitution. The weight of evidence about bilingual programs is that ...

Ms GILMOUR: I am not talking about whether the bilingual program is good or not. I am saying that, if you want something like that, such a statement in the constitution gives ...

Mr DONALDSON: An opening to do it.

Ms GILMOUR: An opening, yes.

Mr DONALDSON: But you should not be legislating that in a constitution.

Ms GILMOUR: You will not be. A preamble would not go into details such as a requirement to have a bilingual program in every school. It is just policy; that is what I am talking about.

Mr DONALDSON: The aim is to find points of principle. It has been said that the 2 communities are effectively saying the same sort of things. The problem is to find a way of expressing those broad principles rather than addressing specific matters in detail.

Mr HATTON: The task is one of finding the words that can express things so that they are not offensive to one side of the community or the other whilst saying what both sides are trying to say.

Mr DONALDSON: Managing to do it in a fashion which will allow for reasonable interpretation in the future without being too specific. I do not think that, in considering a constitution, you should be setting out to prepare for the future of the Northern Territory. I think you should be setting some standards which should not be breached but there is a limit to the extent to which you can define directions.

Mr HATTON: You can set a broad direction and broad rights.

Ms GILMOUR: But constitutions never contain much detail.

Mr HATTON: Unless they are like the constitution of Papua New Guinea.

Mr WRIGHT: It depends who writes them, how they are written and what language they are written in.

Ms WADDY: I am thinking of some sort of statement which encourages the process of bilingual education without being prescriptive. In other words, something which would not leave it to the whim of a particular government as to whether there should or should not be a bilingual program but which ensures that, if the community wants to take that direction, it is given every support rather than having things chopped and changed at the top level of government.

Mr HATTON: Can I just throw in an example? If the constitution provided for the protection of Aboriginal language, that could place the government under an obligation to provide a dictionary recording all the languages of the Northern Territory.

Ms WADDY: In other words, to give support for those things that ...

Mr HATTON: That could be justified on the basis that people who felt they were losing their language, or wanted to learn their traditional language, must be provided with the means to do so. Whilst that might meet a constitutional requirement, it might be counter to the prevailing wisdom or educational approaches to bilingualism, unilingualism or appropriate approaches to educating people.

Ms GILMOUR: Fair enough. I am talking about giving a level of support at that sort of basic level.

Mr HATTON: There are ways of making the education system more culturally sympathetic. For example, it does not make much sense for children in places like Nyrippi to the west of Alice Springs to be read stories about Snow White and the seven dwarves. Such stories do not have much significance for those children. Nowadays, more culturally relevant material is becoming available. That is a way of making the education system more culturally sympathetic.

Ms GILMOUR: The suggestion that Merv Brown made in Angurugu today about recognising Aboriginal law is surely far more radical. It is almost a contradiction for a constitution to recognise that there is a pre-existing law which could possibly override the constitution itself. Such a step would probably be a lot more radical than the recognition of Aboriginal languages, which might have no practical implications.

Mr FIRMIN: There are ways of allowing for Aboriginal law to function within the context of the normal judicial law. That occurs to some extent at present in respect of penalty structures.

Ms GILMOUR: So we define their law in our legal system?

Mr HATTON: Our existing legal system now makes provision for traditional law, doesn't it?

Mr NICHOLSON: Only in relation to penalties and things like that. Not in the full sense.

Ms GILMOUR: It is really a fairly token approach.

Mr HATTON: The basis is already there and the question is how far it can be extended and what is appropriate? That is a question that you are going to have to deal with and it is a question that it is in the mind of the community.

Ms GILMOUR: But that is what I was wanting.

Mr HATTON: At least 22% of the community, or a percentage of that 22%, has that in its mind.

Ms GILMOUR: You do not want to lead people to believe that Aboriginal law ...

Mr WRIGHT: These things need to be examined and explored.

Ms WADDY: Of course they do.

Mr WRIGHT: The Navajo in the United States have their own judiciary and their own laws within their reservations.

Mr HATTON: I am saying that the questions are on the table. You cannot ignore them and you need to develop an opinion on them because, one day, somebody is going to ask you whether you think we should do this or that.

Ms WRIGHT: What right have we got to come here and tell these local people what our laws are and how they should live by them?

Ms GILMOUR: That is what the British did when they landed. It is imperialism. That is what it is all about.

Mr HATTON: Whether we had the right or not, we did it. The question is: how do you deal with the situation that has resulted?

Ms WRIGHT: In this small town of Alyangula, we have 36 nationalities.

Mr HATTON: You cannot exactly describe it as an Anglo-Saxon British society, can you?

Ms GILMOUR: Everyone describes it as European.

Mr HATTON: I feel distinctly un-European myself. The fact that I am Caucasian is an entirely separate question.

Mr FIRMIN: I like to think we all should be Territorians and a lot of people are saying that to us now. Rather than talking about the different ethnic backgrounds, they prefer to talk about Territorians.

Ms GILMOUR: That is where you are going to get the statehood mentality.

Mr FIRMIN: I hope so because that is really what we are.

Mr WRIGHT: I heard somebody talk about Australians and Aborigines at a conference. A well-known Aboriginal man who is a good friend of mine said: 'If you are going to call me an Aboriginal, please call me an Aboriginal Australian'. He said: 'I believe I am just as Australian as anyone else in here'.

Ms GILMOUR: I have heard people use the term 'Australian' in that way. At this stage, it seems that you are not looking for more specific comments about things.

Mr HATTON: I really am happy to receive them. It also helps us when we go to other communities. We can say: 'This is what other people are saying'.

Ms GILMOUR: Well, I support the unicameral system.

Ms WADDY: That is the Queensland one.

Mr HATTON: Yes. It is the same as we have now. A single House of parliament, without an Upper House.

Ms WADDY: What is the advantage of that? I would have thought that the checks provided by the second House would be preferable.

Mr WRIGHT: The second House is there to protect the people, isn't it?

Ms GILMOUR: It is supposed to be. Whether or not it actually does that is another question.

Mr HATTON: If you had a bicameral system, how would you elect the 2 Houses and what different roles would the 2 Houses have?

Mr FIRMIN: With a small population, it means a duplication of the existing parliamentary system and all the structures that go with it, which is another expense.

Ms WADDY: So how does it work out in other states?

Mr HATTON: Most of the Upper Houses evolved out of the old legislative councils, which were the Houses run by the squattocracy in the colonies. The plebs were given the right to elect people to the Lower House provided that the ruling classes could oversee what they were doing. The role of the legislative councils was similar to that of the House of Lords in Britain, to oversee what the common people were doing and make sure they did not go overboard. They provided a check to maintain the power of the ruling classes. The situation has changed now, particularly in the last decade, as more and more of the positions in the Upper Houses have become elected. On the

whole, however, Upper Houses tend to be more stable and to have more time to review. In New South Wales, members are elected to the Upper House for 12 years. A member can remain in that House without facing election while 3 or 4 governments come and go. That situation certainly allows for stability and continuity of thinking. That is the argument for the Upper House.

Mr WRIGHT: To make an informed comment on those things in response to your questions, the community needs to know more about the background to these systems.

Mr HATTON: Alan, that is where this discussion booklet is useful. It does present the arguments for and against various propositions so that people can think about the issues and made decisions as to what options they prefer.

Mr DONALDSON: There is a very strong argument for checks and balances, and that certainly applies in the American Constitution.

Mr HATTON: Yes, we had this discussion at Angurugu this afternoon. The United States has an executive government system as distinct from a responsible government system like ours in which the government is responsible to the parliament. It is a continuum. The people elect the parliament and the parliament is formed from the parliament with the leader of the majority party becoming the head of government. The leader chooses a ministry but the government is responsible to the parliament which is in turn responsible to the people. That is the concept of responsible government.

In an executive government system, like that in the United States, the head of government is elected by the people and that person then chooses the members of the government, who can be politicians or, as occurs in the United States, people who are not elected representatives. The head of government appoints his Cabinet and it functions separately from the parliament. There are various checks and balances between the parliament and the government and, of course, the third element is the courts. It is the courts which draw the checks and balances between the 3 arms of government.

The executive is the government with its head of government, the legislature is the parliament and the judiciary is the courts. There is a balance of powers and, as the booklet indicates, our constitution would deal with the 3 arms of government. The executive in our monarchical system is the head of state, the Governor or the Administrator.

Ms GILMOUR: That embraces the public service.

Mr HATTON: No, that is the administration. That is the fourth arm. The executive is the Governor, who is the representative of the Queen, the head of state. Then there is the legislature, from which the government is formed. The government is the ministry. Only the ministry is the government. The ministers meet, outside their role as the Cabinet, in what is called the Executive Council. That is when they meet to advise the Administrator or the Governor, who actually has to give assent to all the laws and regulations. Whilst the parliament legislates, that must then be assented to by the executive. Once again, this invokes the question of the balance of powers between the 2 arms.

Mr WRIGHT. It is like when Mr Whitlam ...

Mr HATTON: When Mr Whitlam got sacked by the Governor-General.

Ms WRIGHT: In 1975.

Mr HATTON: Yes, 1975. The Dismissal.

Mr WRIGHT: 11 November.

Mr HATTON: Yes, 11 November. The date when Ned Kelly was hung and Gough Whitlam was sacked.

Mr FIRMIN: And it was Armistice Day.

Mr WRIGHT: That is right. The only way I remember.

Ms GILMOUR: It is a big topic then, isn't it.

Mr HATTON: Yes, there is the question of whether the Governor should have that role. Such questions relate to the balance of powers. In an executive government system, the parliament has no say in such matters. The arms function separately. Whilst each arm may have the power of veto over the other, there is not the same continuum of flow.

Mr DONALDSON: Although there are checks and balances in the form of legislative tiers which do not really exist in the unicameral system.

Mr HATTON: In some respects, there are also checks and balances through the common law. The judiciary actually plays a role through its interpretations of laws and its adjudication on the constitutional powers.

Ms GILMOUR: In practice, there are not many situations in which the Senate, as an Upper House, rejects legislation which has been validly supported. Although the Senate has the power, it does not really have the mandate.

Mr HATTON: But it can do it.

Ms GILMOUR: Yes, technically it can.

Mr HATTON: I can think of examples in the last 2 years, in both Victoria and New South Wales, in which Upper Houses have frustrated government legislation.

Ms GILMOUR: That is what I mean. You say 'frustrate' ...

Mr HATTON: By rejecting it.

Mr DONALDSON: The Upper House has the ability to force change in legislation anyway. The government will not put forward legislation if they believe it will not pass through the Upper House, so it adapts its legislation accordingly.

Mr HATTON: The Upper House can just reject legislation and send it back to the Lower House, even if it relates to a legislative program which was specifically put to the people and voted on at the ballot box.

Ms GILMOUR: I suppose the question is whether an Upper House is an appropriate body to have that power. Perhaps it might more appropriately lie with the judiciary which, of course, functions differently. It could not just reject legislation like an Upper House.

Mr HATTON: The most legitimate argument I have seen for an Upper House relates to the federal parliament because the Commonwealth is a federation of states. The argument for the creation of an Upper House arose from the enormous concentration of population in the south-eastern 10% or 20% of the land mass. People in the other regions of Australia said: 'If there is to be a House of Representatives with electorates of roughly equal population size, all the politicians will come from the area of Australia where the population is concentrated and they will make sure that all the money is pumped into that area. If that happens, we will miss out. We want a mechanism which will counter that imbalance. What we need is a House of review which is elected on the basis of equality between the states, no matter what their population size'. That is how the Senate came about.

Ms GILMOUR: But that does not apply.

Mr FIRMIN: It does not apply to the Territory.

Mr HATTON: No, because we are not a state.

Mr FIRMIN: Or the ACT.

Mr HATTON: It applied between 1901 and 1911 when we were part of South Australia.

Ms GILMOUR: I meant that the argument does not apply in terms of the need for the states themselves to have 2 Houses.

Mr HATTON: That is correct. It is a particular argument in respect of Australia as a whole. It would be interesting to see whether a similar argument could be generated in the Northern Territory for the provision of equal regional representation in a House of review. For example, Alan pointed out that there is no representative from this area on the government side of the House. Another example is the argument, sometimes heard in central Australia, about the so-called Berrimah Line. One could speculate that regional representation might overcome some of these perceived problems.

Ms GILMOUR: That is potentially divisive though.

Mr FIRMIN: It is.

Mr HATTON: I am putting a point of view.

Ms GILMOUR: It is like the wrangling between the states.

Mr DONALDSON: It might be something to keep as an option to resolve any difficulties that might arise in constitutional law.

Mr HATTON: You were here at the start of this debate, which began with the question of whether we should have 1 or 2 Houses of parliament. We have simply been looking at the arguments for and against and some examples.

Ms WADDY: But why is it potentially divisive?

Ms GILMOUR: Because you would be dividing Territorians into regions. People would identify with their regions and soon you would have people saying things like 'We are not getting enough', or 'You are getting more than us', and 'Oh yes, but you have such and such'. It would be like the states squabbling over grant moneys.

Mr WRIGHT: That is why ATSC is being developed, isn't it? To overcome the problem of inequitable distribution of representation, which results in smaller groups not having a say.

Mr HATTON: All I am saying is that arguments can be developed to justify varying points of view. Think about the issues and look at the pros and cons. We have presented some ideas there in the booklet and you could probably think of many others yourselves. What we are asking you to do is to form your own conclusions about the most desirable options for the Northern Territory.

Ms GILMOUR: The select committee has agreed on that particular aspect so there would have to be very strong arguments for any change.

Mr HATTON: No. If we get representations from all over the Northern Territory saying that people want a bicameral system, then the select committee will react to that. As 6 individuals who are members of the select committee, our recommendation was for a unicameral House. That is our view, on balance. But there are arguments for and against and it is quite possible that the community would think differently. We are not here to enter a debate for or against with the community. We are here to encourage you to think about the different arguments and to then come and tell us what you think.

Mr DONALDSON: You can have an Upper House elected by the people on a Territory-wide basis.

Mr HATTON: You could use the Hare-Clarke system to elect it.

Mr DONALDSON: It would enable the various interest groups to be represented. For example, Aborigines and the pastoralists would probably succeed in having their representatives elected to such a body and they would then be forced to sit down together and resolve some of the issues generated from the Lower House. If it became too institutionalised and polarised it could be detrimental. On the other hand, it could offer opportunities to harmonise and improve relations between the various groups in the Territory.

Ms WADDY: (inaudible).

Mr DONALDSON: Yes, but you are only electing half a dozen people from the entire Territory, not on an individual ...

Mr HATTON: Can I throw this in? Please accept that I am a unicameralist myself but in this case I am playing the devil's advocate. Imagine how different the Australian Senate would be if the 2 to 1 nexus with the House of Representatives was done away with. At present, there has to be 1 Senator for every 2 House of Representatives seats. The only reason each state has 12 Senators is to create enough House of Representative seats. If the 2 to 1 nexus was broken, we could perhaps return to the original 6 Senators from each state. There would be no reason why that could not happen. Senators could be paid the same salary as ministers on the basis that they could not be members of the government but had to play their part as members of the House of review. They would sit in their regional groupings, from New South Wales, Victoria and so on, no matter what parties they belonged to. They would have no chance of promotion and therefore would not have to curry favour with the Prime Minister or the Leader of the Opposition. Their number would be small enough for the voters in their regions to determine whether or not they have been effectively representing their region. Do you think that might have an effect on the actual workings of the Senate or do you think they would just vote along party lines?

Mr DONALDSON: This was the original intention of the Senate.

Mr HATTON: But it would be a dramatic change to the very structure of the Senate. It would be more like the United States Senate, where they have 2 Senators from each state. The entire United States has only 100 Senators.

Ms GILMOUR: It depends on the quality of the Senators.

Mr HATTON: You can see what they are doing. They cannot hide.

Mr DONALDSON: It is a good place to retire to.

Mr HATTON: I wonder whether it would be. It would tend to be what it was really intended to be back in Roman times, a House of elder statesmen. I am just throwing that in as a devil's advocate.

Ms GILMOUR: I still support the unicameral system.

Mr DONALDSON: A lot of the issues that come up are really party-political issues but there are important principles which should perhaps be enshrined in the constitution. I am talking about principles rather than issues. In many instances, there is a need for options which could help to resolve some of the differences that exist within the Territory. A bicameral system which allowed various interest groups to be represented could be useful rather than destructive. It needs to be carefully considered, though, because it also has the potential to be hopelessly disruptive.

Ms GILMOUR: But you can see from the federal system that an Upper House does not necessarily have that effect.

Mr DONALDSON: I am quite opposed to state governments in general. I think that one government is preferable to state governments. I would be opposed to dividing the Territory into lots of little regions but I think that there are some interest groups which could be represented..

Ms GILMOUR: But that may not be an effective form because they may not get that representation in that way.

Mr DONALDSON: If there are 5 elected members, and given that 20% of the population is Aboriginal, that 20% would have the option of electing an Aboriginal person, if they felt it necessary, to that group of 5. It depends upon what system is used. The Hare-Clarke system has been suggested as one option. A system could be devised which required a person to receive 20% of the vote in order to be elected. 15% of the vote would not get a person elected, although preferences could play a part. The interest groups would have the possibility of achieving representation. There would be very few members. It would not be a large number. The aim is to be constructive rather than obstructive..

Mr FIRMIN: The problem is that if the number in the Upper House was very small, it would have a very heavy workload. It would have a very substantial task in researching legislation.

Mr DONALDSON: That depends on what you are asking members of that House to do. Perhaps they would not have to review all legislation. The constitution could spell out the requirements to be placed upon the Upper House. They do not have to be as all-embracing as the Lower House. The Upper House may have no power to instigate legislation. It may not have the power to review it. It may have specific powers such as the power to reject something if there is a large majority, such as one short of unanimous. You can determine the workload through the requirements set down in the constitution.

Ms GILMOUR: That would vary in accord with conventions.

Mr HATTON: You are in effect writing conventions when you write a constitution.

Ms GILMOUR: That is a question, isn't it. How much do you want to write?

Mr HATTON: That is right. There are other questions which need to be looked at. For example, do you think there should be fixed-term parliaments?

Ms GILMOUR: I agree with the select committee's recommendation, which is for a continuation of the present system.

Mr HATTON: No. What we have recommended is a 4-year term with a minimum of 3 years before an election can be called. In other words, a partially fixed term with some flexibility in the final year of office. In that year, the government must call an election at some stage. It is not absolutely fixed.

Mr WRIGHT: Why should there be flexibility?

Mr FIRMIN: If you want a straight answer, it is probably a political fact of life probably more than anything else.

Mr WRIGHT: Is it just to give the government of the day the opportunity to select the time.?

Mr HATTON: That is part of it.

Mr FIRMIN: That is basically it.

Mr WRIGHT: There are some advantages in the fixed term, which would allow the government to be judged on its performance.

Mr HATTON: Of course, there are arguments for and against.

Mr WRIGHT: Do you arrive at that view from an objective consideration?

Mr HATTON: I think so, yes.

Mr FIRMIN: If you have a fixed term, a campaign against the government can be more effectively mounted in the knowledge that the election will occur at a specific time. The opposition knows exactly when to begin its campaign and exactly how to time it.

Mr HATTON: I would like to be in opposition with a fixed-term parliament. For at least a year before the election, you would be able to exploit every opportunity.

Ms GILMOUR: That is right.

Mr WRIGHT: On the other hand, without that fixed term, the government can manipulate and engineer an atmosphere with the purpose of getting the fickle public onside at the right moment. For example, the promise of tax reform.

Mr HATTON: That can happen with a fixed term too.

Mr WRIGHT: Yes, but the circumstances of the economic climate and so forth are not at your fingertips then. You would be judged on your performance.

Mr HATTON: That is true.

Ms GILMOUR: But the government would start planning for the election at the beginning of the final year of its term.

Mr WRIGHT: Yes, but there would be influences which it could not control and which would be operating at the time of the election.

Mr DONALDSON: Yes, but those are there in any case. Governments have a great deal of power to create a very short-term good time for people. If the preceding 2 or 3 years have been lousy, people will be very cynical about that. If, however, things have been going reasonably smoothly, a government can very easily create a budget that looks appealing and say: 'This is the way we are going. It is great, isn't it. Let's keep going'.

Mr WRIGHT: I think fixed terms would enhance performance.

Mr FIRMIN: The Territory government has basically operated on a fixed term since day 1, as you probably appreciate. Strangely enough, although we do not have fixed terms, governments here tend to run their full term. It is totally different to the federal scene.

Mr WRIGHT: Has been and will be for a long time.

Dr NAIDOO: Mr Chairman, may I make a little contribution. I am not sure what the committee's terms of reference really are. I do not want you to think that I am trying to be cynical but I am a centralist. My views tend to focus upon Australia as a nation. Just 15 years ago, we had the third highest standard of living in the world but today we are 14th. There are many factors which have contributed to this calamity. When we look at it from a democratic point of view, we find that we are overgoverned. We have far too many politicians for number of people we need to take care of. Maybe the fathers of our constitution were over-cautious, for reasons of distance and lack of communications, and we have inherited a federal system that took into account the problems of that time. If our forefathers had operated in today's environment, with communications as they are now, I do not think that they would have arrived at the same arrangement which they arrived at 100 years ago. On Australia Day last year, Geoffrey Robertson was the guest speaker at a function in Launceston where he advocated the abolition of all state governments in favour of a central government and municipal governments with more extensive powers than exist at present.

Mr HATTON: And fewer municipal authorities. In other words, regional governments.

Dr NAIDOO: Yes, with a lot more powers.

Mr HATTON: And the constitution entrenching those powers.

Dr NAIDOO: Yes, although I cannot recall all the minor details of that speech.

Mr HATTON: I will fill you in if you like.

Dr NAIDOO: It made a great impression on me. In that context, I wonder whether it is within the scope of the committee to think about the possibility of splitting the Northern Territory between Western Australia, South Australia and Queensland. Darwin would then have to be a large municipal authority with far greater powers than it has today. If we began to think in those terms, we might make a big contribution towards solving our balance of payment crisis which, on a per capita basis, now puts us behind Brazil and Argentina. I am not blaming all this on the Northern Territory.

Mr HATTON: Good, because we are actually making money for Australia.

Dr NAIDOO: It is an Australia-wide question which I believe all thinking people should address. Can you respond to this rather radical approach?

Mr HATTON: Yes. I am happy to say that I was born and raised in Sydney. I moved to the Northern Territory in 1973, to a place slightly north-west of here, Nhulunbuy. At that time, I was fundamentally a centralist. I could not understand the role of state governments. I held many of the views which you have advanced tonight. At that time, there was no government in the Northern Territory except the federal government. There were local governments in Darwin and other towns

but there was no Northern Territory government at all. As I soon discovered, the reality was I was stripped of my democratic rights as a citizen. I found that I was being governed by public servants and that I had no access to any political representative and therefore no means of complaining about bureaucratic excesses. The bureaucracy in question was reporting to a federal minister whose own electorate was in Victoria. He used to visit the Territory every 12 or 18 months and the public servants used to thumb their noses at him. Any request to the minister had to go through about 5 levels of the bureaucracy and, if it reached him, the response came back through the same channels. If you got a response to a letter to the minister within 2 years, you were lucky. If that is centralism, I am against it. Democracy is about people having access to their elected representatives.

Within a very short span of time, I became an avid federalist. Suddenly I found myself in an area well away from the centre of power, and well away from the politicians making the decisions. Even though we had a federal member who had the whole of the Northern Territory as his seat, you just could not get access. You were incredibly distant from where the decisions were made and I can tell you some of the decisions were frightening. A typical example is the Royal Darwin Hospital at Casuarina, which is exactly the same design as the Woden Hospital in Canberra. That hospital itself is a Norwegian hospital design transplanted to Canberra. The Royal Darwin Hospital actually has snow shields on the windows because some dumb bloody public servant in Canberra thought it was easier that way. There are suburbs in the Northern Territory which were designed in Canberra by people who had never visited the Northern Territory.

That is an unbelievable situation. A single department was responsible for the Northern Territory, the Department of the Northern Territory. Its initials spell DONT and that was more than appropriate. Its various sections did not communicate with one another because they reported to different departments in Canberra. If it was a construction matter, it was dealt with by the Department of Housing and Construction. If it was a health matter, it went to the Health Department, and so on. In one small town in the Territory, a community health centre right was constructed next to a sewage treatment plant. That occurred because there was no local political representation and no local knowledge at the decision-making levels. It was government by public servants who were responsible to Canberra. That is why the Northern Territory people are so determinedly in favour of self-government now and why the Northern Territory has blossomed under self-government.

I oppose the view that the number of politicians indicates that we are overgoverned. If we are overgoverned, it is because we have too many laws and regulations and too many public servants policing them. That is where government intrudes upon the people, not at the level of politicians. It happens at the level of public servants and that is what we faced in the Northern Territory. The fact is that a political representative, to whom you can make representations, has an influence over the decisions which affect your life. That is your best protection as a citizen.

We must also remember that Australia's demography is unique. It is very different to that of Europe. If you were to put all the European states together and call them the country of Europe, the governments of places like France and Germany would be the equivalent of state governments. After all, France is smaller than the Northern Territory. It has a much larger population but it is smaller. We forget things like that. The European nations are small geographic units and they have

as many as 3 levels of government. Some European countries have regional governments as well as municipal governments. That happens in Germany, for example.

In Britain, there are 3 levels of government. There is a Welsh government and a Scottish government. There are other regional governments and there is a British government. There are 3 levels of government in Britain. Our system was developed on the United States model because we have a very large geographic area and a significant diversity of needs. It was also developed to ensure that the peculiar and differing environments of Australia are dealt with appropriately and that decisions which affect people in those particular environments are made by their elected representatives. The boundaries may happen to be those of the old colonies. Whether or not they should be broken up into more states which are more appropriate is a matter that Australia can and should wrestle with. Whether the Northern Territory should be 2 states, whether Western Australia should be 2 or 3 states, whether Queensland should be a North Queensland and a South Queensland, are questions for those states to deal with. That might be a way of achieving a series of regional governments. Perhaps what was being suggested was the abolition of local government and the concentration of local government powers into more state governments or regional governments. That is an alternative way of looking at it, isn't it?

Mr WRIGHT: We would not want to do that. Although this is not relevant to debate on the constitutional issues, I would like to comment. I would not like to see local government done away with because here on Groote Eylandt, we are just as far from the seat of the Northern Territory government as you were from Canberra. For years we have been disadvantaged because we have not had a voice into government. I could go on ad infinitum about such things but tonight is not an appropriate occasion for that.

Mr HATTON: That is important principle and it explains why local government has an important and valid role as one of the 3 tiers. Obviously, there are some things which just affect Groote Eylandt or which just affect your community. I am talking about local planning decisions, the routes for roads, the location of parks, the control of stray dogs and cats, and the organisation of garbage collection.

Mr WRIGHT: Getting a second doctor.

Mr HATTON: Yes, whatever. Those are the sorts of issues which local government can address. There are other issues which affect the Northern Territory as a whole but which do not affect people in Victoria at all. Why should people in Victoria have a say about things which have no effect on them?

Ms GILMOUR: When you went to Gove, there was no state or local government.

Mr HATTON: No, and it certainly drove home to me the point that Alan is making. When you are at a very great distance from the centre of power of a government, it is very hard to be heard.

Mr WRIGHT: They did not have local government in Gove and we were regarded as Gove's poor country cousin.

Mr HATTON: That is right.

Mr FIRMIN: I arrived in Darwin in 1966 and the situation there was pretty much the same.

Mr HATTON: I would like to deal with a couple of the other points which were raised because I do not want to miss any of them. I believe that, because of Australia's geographic size and diversity, there is a valid argument for 3 levels of government. But let me say this for the Northern Territory.

Dr NAIDOO: Can I just make a point here?

Mr HATTON: Can I finish what I am going to say and then you can come back.

The argument for splitting the Northern Territory between Western Australia, South Australia and Queensland was put by the federal member for Kalgoorlie at the Northern Australia Development Council seminar in Broome in 1986. My response was fairly immediate and loud but the general Northern Territory community's was equally vociferous and equally opposed to that viewpoint. People are very proud to be Territorians. That is a reality. They identify as a community.

Dr NAIDOO: Can they afford to be proud?

Mr HATTON: Yes, they can. Do you know that, per head of population - man, woman and child - the Northern Territory earns 3 times the national average international income? The Northern Territory and the 170 000 Australians who live here produce a net annual surplus of about \$1500m. We are producing wealth for this country, increasing the standard of living in Australia and we are subsidising the standards of living of New South Wales and Victoria, which are net importers of goods and are spending Australia's wealth. It is the heavily populated states which are draining Australia, not the states with smaller populations like Queensland and Western Australia. The Northern Territory, in fact, generates more wealth per head of population than Queensland and Western Australia. We can certainly stand up and say: 'Yes we can afford it'.

I am also convinced, although I am having great difficulty in obtaining the figures, that taxes paid by Territorians or businesses operating in the Northern Territory at least equate to the funds that are spent directly by the Northern Territory government, including moneys provided by Canberra. All Territorians pay personal income tax to the federal government. We pay sales tax, import duties and a whole range of other federal taxes. Many companies like Gemco pay their tax via BHP, which is counted as a Victorian collection. However, the wealth is generated in the Northern Territory as company profits. Then there is the \$50m-odd paid each year by Ranger as company tax. When we take all those amounts together, it is clear that the Northern Territory is standing on its own feet.

We have not yet developed to the stage where we are contributing to the important national costs, such as national defence and so forth. We are not making those sorts of contributions to the federal government coffers. We are certainly generating national wealth though and we are certainly at least paying our own way in terms of tax paid by Territorians and tax spent by Territorians. As Territorians, we have nothing to apologise for on either of those grounds.

What is frustrating is that we are not being treated equally as Australians. We do not have the same constitutional and democratic rights, as individuals or as a society, as other Australians. If Australia decides to do away with the states and to have a single centralist government, fair enough.

The Northern Territory is part of Australia. However, while Australia has a federal system and whilst individual constitutional rights rest with people who happen to reside in a state and whilst Australia is a federation of states, our achievement of constitutional equality as individuals and as a community depends upon our achievement of the constitutional equality of statehood at some stage.

Dr NAIDOO: I do not want to be misunderstood here. I am mainly Tasmanian. I lived in Tasmania for many years and I know something about living in a state with a small population. However, I want to interject into this debate an element which will us away from a regional parochial attitude and place the focus upon Australia as a nation. The nation has a lot of problems and in that context the notion of a new state can be considered together with the plans we have heard about for the construction of a new High Court building in Darwin and a new House of Parliament. These are highly costly projects.

Mr HATTON: With the support of the federal government, I might say.

Dr NAIDOO: Eventually it comes back to the taxpayer. These structures are being erected just so that we can think of ourselves as a state.

Mr HATTON: No, that is wrong. We need them.

Dr NAIDOO: Is that the way we should go? That is the sort of argument I am putting.

Mr GILMOUR: It would cost a lot of money to alter the federal system anyway, if you are challenging the federal system.

Mr HATTON: The purpose of the new Supreme Court building is to meet the needs of the court system. The existing building is unsatisfactory and unsafe and cannot be converted or extended satisfactorily. We need to build a new Supreme Court building. The current Parliament House does not just leak; it soaks water in.

Mr FIRMIN: We have to stop in the middle of the wet season.

Mr HATTON: It is very old. It was built shortly after the Second World War.

Mr FIRMIN: It is a fire trap.

Mr HATTON: It is dangerous. It has to be knocked over and we need to build a Parliament House. The size and shape of that has to be decided one day. We have to build it sooner or later, whether it is now or in 5 years time. We have to build it whether we become a state or not. We have to have a Parliament House for your parliament. The only way of avoiding having a Parliament House is not to have a parliament. You might think that is a good idea. I would be prepared to put that to a vote of the Territory people and I think you would lose. Territory people generally have seen self-government as a success and they would not give that up. If you are going to have a parliament and a supreme court, do you do it in such a way as to provide a focal point for the community or do you just put up 2 concrete bunkers?

Mr WRIGHT: No, I think you should do it properly. I visited Washington last year and I was very impressed with the architecture. I could see what the country was about, how it was built

on its history. The architecture reflects what the community is all about. In 50 years time, I would like my grandchildren to be proud of what is in Darwin and the Territory - their parliament, their court house and their public buildings. I think that just reflects the standard that you should aim for in your communities.

Mr HATTON: It is just a question of timing.

Mr WRIGHT: We have all zeroed in on Dan but I think ...

Mr HATTON: Yes. I have to admit that he touched on one of my raw nerves.

Mr WRIGHT: Before you came along Dan, I said that if this idea of constitutional development is going to get anywhere, there needs to be lots of debate. In spite of what has been said, what Dan has suggested may still be the best approach.

Mr HATTON: If my advocacy style has tended to be aggressive, I cannot help it. It is just my way. It certainly should not be taken personally.

Mr WRIGHT: That is the political breeding.

Mr FIRMIN: We have both lived through a difficult period in the Territory. We have both fought very hard for statehood and we both feel very strongly about it.

Mr HATTON: I get passionate about my arguments.

Dr NAIDOO: Geoffrey Robertson made a number of suggestions. For instance, the infrastructure needed for such things as the High Court and the parliament could be used for the Darwin City Council, whose role would be almost as important as the present role of the Northern Territory government in Darwin. That was what I was suggesting, so in no way would the people lose their avenue of contact with politicians and representation.

Mr HATTON: They would have more governments.

Dr NAIDOO: They would have more governments and the government would be closer to them. Alice Springs would probably have a bigger council and cover a bigger area. The same would apply throughout the country. Launceston would have a much bigger council. The idea is to abolish all state governments, which would be an enormous saving, and the result would be to bring government closer to the people.

Mr FIRMIN: Closer to the majority of people in the cities. That is the problem. You still would not cover the problems of the rural areas or the wider strategic necessities of development in a state.

Mr HATTON: You would also need to restructure the Senate. However, if Australia goes that way, fine. The Northern Territory goes with the rest of Australia. All we are asking for - and I am speaking personally here as an advocate of statehood rather than as chairman of this committee - is equality. If the rest of Australia goes that way, we will go with them. But while Australia happens to be a federation of states, we should not sit around for 100 years waiting for

other people to make such decisions. In the meantime, we should have the same rights as other Australians. That is what it fundamentally comes down to. The issue of centralism versus federalism is an issue for Australia as a whole. Right now, the issue in relation to statehood is whether we should have the same rights as other Australians or whether you should lose some of your constitutional rights simply because you relocate your residence within Australia? That is what happens when people come to the Northern Territory. In coming from Tasmania to the Northern Territory, you lost some of your constitutional rights. I do not think that is right.

Ms GILMOUR: I was going to move onto the issue of entrenchment. I support the concept of entrenchment and I believe that it should be emphasised when talking about the constitution. That is fundamentally where the quality of the guarantee locked in the constitution comes from. The booklet says that the select committee favours some degree of entrenchment in the constitution. I believe that entrenchment is essential.

Mr HATTON: To what extent? 50% plus 1 vote?

Ms GILMOUR: No, more than that.

Mr HATTON: That is the question.

Ms GILMOUR: How much more?

Mr FIRMIN: Yes. In order to change the constitution, what percentage of the population needs to support change?

Ms GILMOUR: Obviously, the feeling is that the degree of entrenchment in the federal constitution is a bit too strict.

Mr HATTON: No, we are deliberately not saying that.

Ms GILMOUR: That is what I am making the intellectual comparison with - the federal constitution. I would support the same degree of entrenchment.

Mr HATTON: A majority vote?

Ms GILMOUR: A majority vote, yes.

Mr HATTON: That is 50%.

Ms GILMOUR: Well, in a referendum it will be ...(inaudible).

Mr HATTON: That is right.

Ms GILMOUR: That is a problem isn't it? It have to be more than 50% because otherwise ...

Mr HATTON: Or do you have different levels of entrenchment for different provisions in the constitution?

Mr FIRMIN: It could be a shandy entrenchment.

Ms GILMOUR: And will have to counterbalance what is in the constitution with the entrenchment. That is the problem with some areas of the federal constitution.

Mr HATTON: I will give you another example, just to get stimulate debate and discussion, as I have been doing and will continue to do.

Last year, in the federal referendum, you were asked to give a yes or no answer to a number of questions. Some of the questions linked issues in such a way that you may have been forced to vote no on the basis that you disagreed with part of what was proposed in spite of supporting another part. It may be that a constitutional amendment clause could specify that multiple issue questions would not be allowed to be put to a referendum. It may be that, if a single-issue question about whether the federal parliament should have a 4-year term had been put to last year's referendum, it would have passed.

Ms GILMOUR: Are you arguing that the simple fact of having a referendum creates a considerable degree of entrenchment even if a straightforward simple majority applies?

Mr HATTON: Not exactly. I am saying that it would be possible to prevent governments putting several issues together in a single question and asking for a yes or no answer to all of them at once. An alternative might be to have some sort of multiple choice arrangement.

Ms GILMOUR: You are talking about the conduct of referendum.

Mr HATTON: That is right. But that is part of setting the rules for amending the constitution, isn't it?

Ms GILMOUR: Yes.

Mr HATTON: Think of all the problems that exist under the federal system and ask yourself whether or not it is possible to avoid them here.

Dr NAIDOO: How many Senators do you envisage?

Mr HATTON: That is a statehood question.

Dr NAIDOO: The same as Tasmania?

Ms GILMOUR: Does this assume that there is an Upper House?

Mr HATTON: No. This concerns the number of representatives from the Northern Territory in the federal Senate.

Mr HATTON: We are moving out of the constitutional arena into matters associated with statehood. My view, and I think it is general view of other members of our parliament, including members of the committee, is that the only just and proper arrangement would be for the state of the Northern Territory to have the same number of Senators as other states. Whether that would be politically realistic in the beginning is another matter. However, in my view there must be eventual

equality in Senate representation and there must be a guaranteed time frame to achieve it. To do otherwise would be to condemn the Northern Territory to second-class status forever and I would not be the person who would recommend that to the citizens of the Northern Territory.

Dr NAIDOO: So you are not demanding full representation immediately because it is probably not feasible.

Mr WRIGHT: It is unrealistic

Mr FIRMIN: It is feasible but it is not politically wise.

Mr HATTON: It is probably politically unwise. I personally think that the most likely solution will be that there will initially be 4 Senators, that the number will increase to 8 within 1 or 2 elections and that, after another 1 or 2 Senate elections, the number will increase to 12.

Dr NAIDOO: At the time of federation, what was the ratio between the population of Tasmania and New South Wales in terms of determining Senate representation?

Mr HATTON: I think Tasmania had about 150 000 at that stage.

Dr NAIDOO: It was closer, wasn't it?

Mr HATTON: No. New South Wales had close to 2 million people then, didn't it?

Mr WRIGHT: There was a very big gap in the case of Western Australia.

Mr HATTON: There have always been massive differences. Western Australia had only about 110 000 people at federation.

Dr NAIDOO: But it insisted on parity.

Mr HATTON: Absolutely.

Mr FIRMIN: All states did.

Mr HATTON: Our structure of federalism is substantially based on the United States system. The principle of equality has been applied and reinforced with new states like Alaska and Hawaii. The state of Wyoming, with 310 000 people, has the same Senate representation as the state of California with 24 million people.

Dr NAIDOO: So when Hawaii and Alaska came into the federation they each had 2 Senators.

Mr HATTON: Yes.

Mr DONALDSON: What is the political attraction of having 12 Senators? It strikes me that there will probably be 6 from each party.

Mr HATTON: The objections from down south arise because they have enough trouble with a self-governing Northern Territory government with 2 Senators and 1 member of the House of Representatives. They remember their experiences with Tasmanian Senators over the decades and they think that the Northern Territory is likely to be even more strident than Tasmania was.

Mr FIRMIN: It would not matter if there 6 ALP and 6 CLP Senators ...

Mr HATTON: That is exactly what we need because it would force the national government to think of the entire nation.

Ms WRIGHT: Did that experience occur when Brian Harradine was an independent Senator for Tasmania?

Mr HATTON: Yes. The argument for equal Senate representation has nothing to do with party politics. Rather, it would change the entire regional balance of power in Australia. In the Senate, the states with small populations would outnumber the more heavily populated states Senate by even more. I am talking about Tasmania, the Northern Territory, Western Australia and South Australia. Increasingly, Queensland has become part of the eastern seaboard block. Just by dint of population increase, it has become the third major force.

Mr WRIGHT: Queenslanders would not agree.

Mr HATTON: No, they think that they are the first major force. In terms of population size, however, that is where they are situated now.

The sorts of fears I have been talking about, held by decision-makers in the south, will make it politically difficult for us to achieve equal representation in the Senate.

Mr FIRMIN: They are also worried because there is 1 House of Representatives seat for every 250 000 people. They do not welcome the prospect of having 12 Senators in a region which has only 1 House of Representatives seat.

Mr HATTON: We are not asking for a minimum of 5 seats in the House of Representatives. The House of Representatives is the people's House and it should be based on population size. Unless we have the quota for a second seat, we cannot have a second seat. On statehood, our quota should be assessed on the same basis as the states - on population.

Mr WRIGHT: You spoke about the nexus earlier ...(inaudible).

Mr HATTON: It means that the other states would have more seats in the House of Representatives. They would in fact increase their power.

Mr WRIGHT: It would generate more seats for other states in the House of Representatives.

Mr HATTON: But none in the Northern Territory. Under the nexus, seats are spread nationally according to populations.

Mr WRIGHT: So you would have 12 Senators, 1 seat in the House of Representative.

Mr HATTON: Maybe 2 seats in the House of Representatives.

Mr WRIGHT: Maybe 5 extra seats in the House of Representatives elsewhere in Australia.

Mr HATTON: No. If you have an extra 10 Senators, that creates an extra 20 seats in the House of Representatives.

Mr FIRMIN: Under the nexus, another 20 electorates would be created in the rest of Australia, outside the Northern Territory.

Mr HATTON: And that has a ripple effect on electoral boundaries, requiring redistributions.

Mr FIRMIN: When some people look at that and see the possibility that they will lose their seats, they say 'No, no, no'.

Mr HATTON: If electoral boundaries change, it may change the balance of the gerrymanders.

Mr DONALDSON: What if there were 10 Senators for each state?

Mr FIRMIN: It would be nice to go back to 6 again.

Mr HATTON: What brave government will tell its party members that 2 of them will be out of a job because of a reduction in Senate numbers? You can see some of the implications of radical changes to Senate numbers. There are other factors, including the ripple effect on House of Representatives seats throughout Australia, which would make it very difficult for the Northern Territory to achieve 10 additional Senate seats upon statehood.

Mr DONALDSON: If you are going to have 4 additional Senators at each election, you are going to create lots of little ripples that will have to be resolved.

Mr HATTON: At least the change would be predictable, particularly if it occurred at every second election. It may well be that population growth in Australia will create the extra House of Representatives seats which would avoid the necessity of expanding the Senate generally.

Ms WADDY: These statehood issues are generating a lot more interest than the constitutional ones, aren't they?

Mr HATTON: Oh yes, they do. But they are part of the debate about how this place will function. How will you protect your rights, how will you mix together, how will you create a parliament, how will the parliament be elected, who has the right to vote, who has the right to stand for parliament, how will the powers be structured, what human rights will be protected in the constitution, and so forth. When you determine the answers to those questions, you have the framework for a state. You will have made statements about the sort of society you want. You will then have just as passionate a debate on the statehood issues.

Right now, in tandem with the work that is being done on the constitution, the Chief Minister is negotiating on a proposal for the transfer of powers to the Northern Territory under the terms of

the Self-Government Act. That is going on side by side with this work. It is a unique moment in Australia's history.

Ms WADDY: That is what I think you need to sell when you are trying to communicate with people.

Dr NAIDOO: We have a precedent in the case of locating a capital city. Our constitutional fathers decided on a compromise and set up Canberra as the national capital. Is there any thought of moving our capital city away from Darwin towards the central region?

Mr HATTON: No. That would be a gross waste of money.

Dr NAIDOO: Before you build the Legislative Assembly.

Mr HATTON: No. Forget the Legislative Assembly building. That is a minor part of it. The important considerations are the location of the financial institutions, the centre of government infrastructure in terms of departments and department heads. The capital city has to be at the centre of government and any move would require the relocation of all that infrastructure. You cannot just leave it in Darwin whilst relocating the decision-making level of government. The administration and the government have to be located together.

Ms WADDY: And the reality of Australian capitals is that they are all on the seaboard.

Mr HATTON: If you moved the capital to the halfway point between Katherine and Tennant Creek, it would be in the vicinity of Elliott. It would be even further away from you.

Dr NAIDOO: But this has been done in other parts of the world.

Mr DONALDSON: There are very sound economic reasons for keeping Darwin or Alice Springs as the capital. In Europe, the closest point of economic contact is normally chosen as the capital. For the Northern Territory, the closest point of economic contact has to be Darwin or Alice Springs.

Mr HATTON: It would be Darwin.

Mr DONALDSON: That is where you will generate the economic activity.

Mr FIRMIN: Economic influence is going to be very important. It is already developing to the north.

Ms WADDY: The actual resources available to support a population are very important. Just think of the water supply to begin with.

Mr HATTON: People have to drink.

Mr WRIGHT: There are examples of what I am suggesting. Brasilia is one. In Nigeria the capital was moved from Lagos to a location in the interior because ...

Mr HATTON: I am not saying that it is impossible. A future government may make that decision but I cannot countenance it. I think it would be fair to say that, among the ranks of the major political parties in the Northern Territory at present, nobody is even remotely contemplating such an option.

Ms WADDY: How many communities are you visiting?

Mr HATTON: On this round of visits, we are going to 59 communities.

Ms WADDY: Apart from Darwin.

Mr HATTON: Yes.

Ms WADDY: But it includes Alice Springs.

Mr HATTON: Yes. Alice Springs, Tennant Creek, Katherine, Jabiru, Nhulunbuy, Groote Eylandt, Ngukurr, Numbulwar, Ramingining, Milingimbi, Milikapiti.

Ms WADDY: What is the smallest community you are visiting?

Mr FIRMIN: Nyirripi is probably the smallest we have been to so far. No, perhaps Wallace Rock Hole would be smaller still. Wallace Rock Hole is just out of Alice Springs, just out of Hermannsburg.

Ms WADDY: How many people attended?

Mr FIRMIN: I think there were about 40.

Mr HATTON: We have been to Kintore, Docker River, Yulara, Mutitjulu, Finke, Nyirripi, Areyonga, Harts Range, Wallace Rock Hole, Utopia, Mount Allen, Yarralin, Lajamanu, Dagaragu, Kalkaringi, Bamyili, Papunya ...

Ms GILMOUR: We believe you.

Ms WRIGHT: What about Umbakumba?

Mr HATTON: We have not been there yet.

Mr WRIGHT: Are you going to Umbakumba?

Mr HATTON: No.

Mr WRIGHT: It is all relative. Angurugu is the country cousin to Gove and Umbakumba is the country cousin to Angurugu.

Mr FIRMIN: They were going to come to the meeting today.

Ms WADDY: Yes, but that is not good enough.

Mr WRIGHT: It is not fair to that community.

Ms WADDY: The politics of this island is such that that is impossible.

Mr WRIGHT: 60 would have been a good round figure.

Mr FIRMIN: We will probably have to visit some of the other communities on the next round.

Mr HATTON: If a community says, 'We want you to visit us', we will do so. We would welcome that.

Mr FIRMIN: The same sort of thing has been said to us in other communities.

Mr WRIGHT: I think we all understand that.

Can I ask whether, in the case of the larger centres, you have established any means of servicing them with information on a continuing basis?

Mr HATTON: The Office of Local Government is our principal vehicle. We have been working with it since before Christmas and it has been substantially involved in organising our programs and carrying out preliminary work. We have had contact through regional conferences of OLG field officers. In addition, the government has approved and is implementing through the coordination committee a scheme which will utilise the field staff all government departments to assist in the dissemination of information or to operate as points of contact. This would include health centre staff and so forth. Of course, this has to be done in a careful, bipartisan way. We do not wish to drag public servants into a party-political debate. We are taking that road because the government administration infrastructure is a vehicle which can be used to get information to the people.

Mr WRIGHT: I asked the question in the hope that we might be able to receive a service equal to that received in the more populated areas. Without wanting to beat a drum, it is a fact that we miss out on everything. We do not want to miss out on things that are important. In areas such as health, education, telecommunications and so forth, decisions are not made on the basis of equality. They are made on the basis of location. The remoter communities need better access to these services.

Mr HATTON: I think it is reasonable to say that our committee has been very conscious of that. We have made a deliberate attempt to visit remote areas.

Mr WRIGHT: I do not know how you are going to build on that and keep it going. Let us hope, for our sake, that you can.

Mr HATTON: The intention and the desire are there.

Mr WRIGHT: I have made a mental note to remind you.

Mr HATTON: I have no doubt that you will. You have never stopped doing that in the 15 years I have known you.

Mrs WRIGHT: You should live with him.

Mr WRIGHT: I think it is these communities that make the Territory. Why should we be disadvantaged? We now have a good dentist. Why shouldn't we have a good dentist? We have good doctors now. Why shouldn't we have good doctors?

Mr HATTON: You should.

Mr WRIGHT: People here are just as important as people anywhere else.

Mr HATTON: I agree with you.

Mr WRIGHT: We pay our taxes.

Mr HATTON: Perhaps we ought to look at bringing local government to Groote Eylandt.

Mr WRIGHT: Why not, as long as it has something to offer?

Ms GILMOUR: And entrench it in the constitution.

Mr DONALDSON: Has the issue of local government been raised in the context of the constitution?

Mr HATTON: The entrenchment of local and community government is discussed in the booklet.

Ms GILMOUR: That is what the federal referendum was about.

Mr HATTON: One of the arguments against it was the fact that, in virtually all of the state constitutions, there is entrenchment of local government.

Mr WRIGHT: I am getting some signals about my other commitment. If you will excuse me, I have to leave. I would like to take one of the booklets.

Mr HATTON: Certainly.

Mr WRIGHT: Thanks very much for the time you have given us tonight.

Mr HATTON: Thank you. I have really enjoyed this evening's debate. I have found it very stimulating and I hope, Dan, that you will really be involved in the debate as it continues. I look forward to it.

Dr NAIDOO: Yes, I will. It is just that I have another meeting to attend now.

Mr HATTON: I am sorry that you missed the first part of tonight's meeting. Basically we were just explaining how we are going about the process.

(Recording suspended and subsequently resumed.)

Ms GILMOUR: I believe that the human rights aspects of the constitution and the question of Aboriginal land rights are very important. This is an opportunity for the Northern Territory to lead the rest of Australia in terms of the framing of a constitution which recognises these rights. There is

no reason for Territorians to be as timid as the rest of Australia in terms of the recognition of human rights in legislation. I definitely support the inclusion of some form of protection of human rights in the constitution and the entrenchment of Aboriginal land rights, if not other rights.

Mr HATTON: There will be quite a debate in relation to the issue of entrenchment of rights. I am not expressing a view on the matter because I have not yet formed a clear view. It seems to me that there is a conflict between what might be called a North American and a British psyche. The attitude of the former is that your rights do not exist if they are not written down while the latter holds that history and common law are the protectors of your rights. There are different perceptions of how rights are guaranteed, rather than whether or not the rights should exist. This became very clear to me when, at a recent legal conference, an American stood up and said: 'You people have no rights. You do not have a bill of rights'. Of course, that is nonsense. The Australian people have rights which originate from the Magna Charta and have been developed with the evolution of the common law over a long period.

Ms GILMOUR: But there are gaps.

Mr HATTON: Yes. The people with the British psyche, if I can use that terminology, argue that their rights are deeper and have evolved more meaningfully through the wisdom of the courts over centuries than those that which exist under legislation in the forms of bills of rights or constitutions, which are subject to interpretation, sometimes flamboyant interpretation. I do not know the answer.

Ms GILMOUR: I should think that that whole area would have to be the topic of a discussion paper. We have already talked about the compulsory acquisition of land. That touches on human rights. If the constitution contained a provision about the right to freely own property, that problem would not exist. It is one of the gaps in common law protection of human rights. I do not have anywhere near enough information to even form an opinion on how big the gaps are in the common law or how effective a written bill of rights is. There is a need for much more information. It was discussed in the bicentennial year, together with the Aboriginal treaty. However, the Territory has an opportunity to lead the rest of Australia in this area and not just to consign it to the too-hard basket, to leave it to Canberra because it is too new and too different.

Mr HATTON: That is another question that needs to be answered. Is it appropriate for the Northern Territory to take the lead? Is it an appropriate matter to be dealt with in a state constitution or should it be a matter for federal constitutional considerations? I do not know the answer but it is a question that must be posed.

Ms GILMOUR: There is nothing to prevent it being addressed in both constitutions. So why leave it to the federal constitution?

Mr HATTON: That is true but it is a fact that state constitutional rights cannot bind the Commonwealth. The rights would therefore exist only in respect of the state concerned.

Ms GILMOUR: That is better than nothing.

Mr HATTON: Maybe. I am only posing the question. I do not know the answer.

Ms GILMOUR: I cannot see the logic in saying: 'Do not have anything at all in the Territory constitution because it can be done in the federal constitution'. If it is a worthwhile thing to do, it should be done.

Mr HATTON: That will be the focus of the debate. Some will argue that you are protecting rights if you prescribe them in a bill of rights.

Ms GILMOUR: Other things flow from that.

Mr HATTON: Others will argue that, if rights are written down, they will actually be limited. There is a case to be argued.

Ms GILMOUR: I can appreciate that.

Mr HATTON: There is an argument that it is dangerous to constitutionally entrench rights. And, if rights are to be entrenched, which rights are they?

Ms GILMOUR: If you simply entrench the right to freedom of speech, it can be done in a very basic and generally worded way.

Mr HATTON: How does that affect the libel laws of the country?

Ms GILMOUR: I do not know.

Mr HATTON: It is a question that has to be asked.

Ms GILMOUR: I guess that is for the courts to interpret, isn't it?

Mr HATTON: No. You have to wrestle with that.

Ms GILMOUR: Are you are saying that the right to freedom of speech should not be protected?

Mr HATTON: No, I am not saying that. I am saying that there are no simple questions in relation to this constitution. We all believe in freedom of speech but is it the freedom to libel?

Ms WADDY: Obviously not.

Ms GILMOUR: Well that is the interpretation ... (inaudible).

Mr HATTON: Where?

Ms GILMOUR: Are you saying that you will have something that says everyone has the right to freedom of speech but not to libel?

Mr HATTON: I do not know.

Ms GILMOUR: I would have thought you would just stick to a general statement similar to that which Australia has already agreed to in the United Nations Convention. Something along those lines but not that exactly. The Territory has been pushed into the forefront of land rights and it is a

question of whether we want to stay there, go backwards or go forwards. There is no reason why the same attitude cannot be adopted with respect to some other areas. You have to look at specific cases.

Mr HATTON: I am really being the devil's advocate. Please appreciate that. I asked the question.

Ms GILMOUR: That is your occupation.

Mr HATTON: Particularly in this particular role.

Ms GILMOUR: I can appreciate what you are saying.

Mr HATTON: I want to stimulate you to go away and say: 'Right, I had better think some of these matters through'.

Ms GILMOUR: It is not straightforward.

Mr HATTON: Yes. That is what I am trying to stimulate you to do. You could specify that freedom of religion should be included in the constitution. Now, on face value ...

Ms GILMOUR: I did not put that in.

Mr HATTON: No, let us speculate.

Ms WADDY: I am saying no.

Mr HATTON: If you write in freedom of religion, is that a Jimmy Swaggart clause? Does that allow somebody to set up business as a so-called religion for the purpose of avoiding tax?

Ms GILMOUR: I see those sorts of problems as interpretation problems. You say that the freedoms already exist.

Mr HATTON: That is what happened in the United States because its bill of rights contains a guarantee of freedom of religion.

Ms GILMOUR: And it was interpreted in such a way that such things were allowed to occur.

Mr HATTON: It is classified as a religion. Similarly, there is a simple clause in the Australian Constitution which says that trade and commerce between the states shall be absolutely free. One result of that is that truck drivers cross state borders in the process of making deliveries to their next door neighbours. They do that in order to avoid road tax by becoming interstate hauliers. That is why I am saying that you have to think carefully about the consequences of putting things into the constitution. The courts have to ask what the specific clauses of the constitution mean. If the constitution says that there shall be freedom to practice religion, whatever that religion may be, that is exactly what it means. This is where the arguments from the standpoint of the British psyche come in. All I am saying is that it is not a simple question. It needs to be thought through.

Mr FIRMIN: There is a reference on page 123 of the information paper to the United Nations Charter. Article 19 is about the expression of freedom of speech. Graham just pointed out to me that, if you read that in conjunction with article 129 clause 2, there is a limitation: 'In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and the respect for the rights and feelings of others and of meeting the just requirements of morality, public order and the general welfare of society'. That is the limiting factor.

Ms GILMOUR: And all of those things are open to interpretation as well.

Mr FIRMIN: To some extent, yes. Nothing is ever perfect.

Mr HATTON: Once you write something down, you superimpose it on centuries of common law.

Ms GILMOUR: Not necessarily. Not if there is a gap in the common law.

Mr HATTON: If there is gap, right.

Ms GILMOUR: I would certainly like a lot more information about that.

Mr HATTON: That could be a worthwhile subject for an information paper.

Ms GILMOUR: I would also like more information on certain human rights issues that have arisen. For example, Mr Firmin told the story of how his land was acquired. That happens to a lot of people in Australia but it also does not happen to a lot of people. Those to whom it does not happen don't know anything about it. Some people in this country would perhaps feel that they have not been accorded freedom of religion or freedom of speech in this country. I would like to hear about what happened in those cases.

Mr FIRMIN: I feel like the tree which has been hit by lightning. I have been hit by it twice, not just once. I have had 2 lots of land acquired.

Ms GILMOUR: There are brick walls in our law. You hit the wall and the law does not give you anywhere to go.

Mr NICHOLSON: There is a South Australian case that says that the common law contains no guarantee of freedom of religion. There is a gap in that respect.

Ms GILMOUR: That is the sort of thing I am interested in. I want to know exactly what the situation is. We all have a mentality which says: 'Oh yes, we are a free country. We know we can do this and that'.

Mr HATTON: I can feel a discussion paper coming on, Graham.

Ms GILMOUR: But we do not know what we can and cannot do.

Mr FIRMIN: I was just saying the same thing to Graham a moment ago. I have always believed that, because of its historical basis, common law was one of the strongest protections of our rights as individuals. However, there is just more food for thought on a couple of issues.

Ms GILMOUR: It is safe because it is hard to change, just like something entrenched in the constitution. Our closest thing is the Magna Charta.

Mr FIRMIN: I must admit that I feel comfortable with the common law.

Ms GILMOUR: I have been suggesting that we should not be too timid. Let's get more information. Let's realise that we may have a great opportunity here to do something new and to show people that something new can be good. It does not always have to be dangerous.

Mr HATTON: It is absolutely certain that we have many fascinating debates before us.

Ms WADDY: We have to consider the unforeseen problems that might be created. That seems to have happened with freedom of religion in the United States. Didn't Canada get more problems than it bargained for too?

Mr HATTON: Canada had some unbelievable problems when it introduced its Charter of Rights. We have a copy of it. One of the topics of debate at the conference I referred to was the issue of privacy and police investigations. Gradually, court interpretations are probing the question of what constitutes invasion of privacy in the case of police investigations to prevent the violation of people's right to protection from robbery. Is there a constitutional protection against that? I was bemused at some of the debates involving lawyers and academic lawyers. They were saying that, if a policeman walks past your car at night, shines his torch into it, discovers some stolen property inside and interrogates you about it, any evidence so gained is inadmissible because the search is illegal. They argued that the police officer would be intruding on your privacy by shining the torch into your car.

Ms GILMOUR: Are you saying that the search was illegal in terms of the Charter of Rights?

Mr HATTON: Yes. Those sorts of debates have been going on in Canada because the right to privacy sounded like a nice warm thing to have.

Ms GILMOUR: But that is new legislation. They are just in the process of thrashing it out and finding its limits.

Mr FIRMIN: It was put to us at one of our meetings that everybody should be guaranteed clean air and clean water. It sounds like a nice little motherhood statement until you start trying to work out how those things might be guaranteed.

Mr HATTON: They wanted a constitutional guarantee of environmental protection.

Ms WADDY: In Australia?

Mr FIRMIN: It was put to this committee as something which ought to be incorporated and entrenched in our constitution.

Ms WADDY: Goodness gracious! I have just been reading an article about some of the things that are carried through the air and are found in the middle of Australia because they have been transported through the atmosphere.

Mr HATTON: There is a very significant and organised lobby in favour of citizen recall and citizen-initiated legislation.

Mr FIRMIN: It means that, if a certain percentage of the population approves of proposed legislation, you can march into parliament and demand that it be passed.

Mr HATTON: It is suggested that if, say, 10% of the voting population signs a petition that the parliament should put up a particular piece of legislation, the parliament is compelled to do so.

Ms GILMOUR: But not necessarily to approve it.

Mr HATTON: No, the parliament does not have to say yes or no. It has to put it to a referendum of the people and the people can accept or reject a particular piece of legislation initiated in this way. It has been proposed that, if a certain percentage of the population signs a petition, the government can be forced to hold a general election or an election for a specific seat. A significant organised lobby is arguing for this form of citizen-initiated legislation and citizen recall.

Ms WADDY: They must be feeling that parliaments are not serving their needs.

Mr HATTON: There is a national lobby under way. It has been active in the federal parliament and the issue will certainly be raised in the context of the Northern Territory's constitutional development. The issues will be raised and they will be put before the various communities throughout the Territory. People are going to be asked: 'What do you think of this idea?' If you think it is a good idea, it may turn up in the constitution. If you say it is a bad idea, obviously it will not.

Dr NAIDOO: It might apply in the case of the third runway at Sydney Airport, or issues like that. People might feel strongly enough to generate the required number of issues. I don't see anything wrong with that.

Mr FIRMIN: Nor do I in some respects. The problem which has to be faced up to in the end, however, is that of the broader national interest.

Ms WADDY: There is the cost too.

Mr HATTON: What percentage of the population is regarded as sufficient to justify the cost?

Dr NAIDOO: So how do you determine the national interest?

Mr HATTON: The problem, as I see it, is this. In hard-core party political terms, the fact is that at least 30% of people are going to vote for Labor and at least another 30% will vote for the

conservative parties. Those people will vote that way no matter what. In that context, imagine what would happen if the percentage required to force an election was 10% of the voting population. If a Labor government was in power, the conservatives might say: 'The time is right. Let's nail this government'. In a situation where it was politically advantageous, they could be certain of having 10% of their committed voters sign a petition which would force the government to the polls. Do you think that is good?

Ms GILMOUR: Only certain sorts of people will utilise that particular right.

Mr FIRMIN: I think you would find everybody trying to use the same system.

Mr DONALDSON: People can become very worked up on particular issues. Whitlam is an example but there are plenty of others as well.

Mr HATTON: High emotion.

Mr DONALDSON: Yes, there are many examples of people making very improper decisions based on the immediate needs before them.

Mr FIRMIN: A lot of people do not understand the issues at the time. I can think of a very small example. In the days before I was involved in politics, I was Chairman of the Road Safety Council for a number of years. During that period, we were trying to bring in random breath-testing. There was considerable opposition to that in the Northern Territory.

Ms GILMOUR: They all thought that they would get caught.

Mr FIRMIN: I ran a referendum throughout the Territory and found that it was about line ball. In the second year, I had a slight advantage which helped to put the politicians in a no-win situation. We ran a youth education program and, when we went back to the electorate after that, we got about 54% support. I managed to get the politicians to agree to put a bill on the floor of the House with a sunset clause of 2 years to see if it would work, and to allow a free vote on the legislation. They finally did that. Within 2 years, it had been generally accepted as one of the best things that had happened in the Northern Territory. The legislation was reviewed at the end of the 2 year sunset period and put into law for all time. However, I had to work for nearly 5 years to get it in place. It was very difficult.

Mr HATTON: Those are the sorts of issues you will have to face up to in the process of debate.

Ms GILMOUR: They are the area which will be the most ...

Mr HATTON: They will be the most emotional issues. I think the mechanics of putting together the structure of parliament and electoral provisions will come together in a fairly straightforward way. However, when you get into the questions of rights and freedoms ...

Ms GILMOUR: Except for maximum tolerance in electorates. I have been living in Queensland, you see.

Mr FIRMIN: We have always had a maximum tolerance of 20%.

Ms GILMOUR: Which is quite large.

Mr FIRMIN: When you are talking about electorates of 3000 voters, it is not very many people.

Mr HATTON: Under the constitution, you might have a maximum tolerance of 20%. That does not stop you legislating for a 10% or 5% tolerance. If the constitution determined that the tolerance must be 5% or 10%, does that mean that, if the population changed between elections and electorate numbers exceeded the tolerance, the constitutional provision would be violated and an immediate redistribution required?

Mr FIRMIN: If that was the case, my electorate would always be changing. I would have to go back to the voters every 6 months because I have the RAAF Base and the Coonawarra Navy Base in my electorate. Both have a considerable population turnover. I also have the Bagot Community in my electorate. People come and go there all the time. Sometimes there are 200 people from that community on the electoral roll for Ludmilla. Then they go somewhere else and the numbers change. Just 4 months ago the number was 40 but now it is 108. Sometimes it is impossible to cope with. In 3 elections, my electorate has had different boundaries each time.

Ms GILMOUR: That is the potential danger though.

Mr HATTON: That is the zoning system.

Ms GILMOUR: I know, but if it is left in ordinary legislation, a zoning system can be introduced anyhow.

Mr FIRMIN: My electorate is now is the largest city-based electorate. It is 26 km² but it still only has 2700 electors. It includes the Berrimah Jail, the Trade Development Zone on East Arm ... (inaudible). I am not sure what will happen next time.

Mr HATTON: Are there any further matters people wish to raise?

Ms GILMOUR: Not for the time being. Perhaps next time.

Mr HATTON: Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

ANGURUGU — Tuesday 2 May 1989

PRESENT: -

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Bobby NUNGGUMAJBARR
Mr WARD
Mr Selwyn RAINER
Mr Mervin BROWN
Ms Susan GILMOUR

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 9 August 1989.

Mr HATTON: Thank you for giving us the chance to speak with you today. My name is Steve Hatton and I am the chairman of this committee of the Legislative Assembly which has the job of working towards getting a Northern Territory constitution written. We are travelling around the Northern Territory at the moment explaining what we are doing and how this job will be carried out. In the back of these books, you will see the names and photos of the members of the committee. You will see that there are 3 people from the CLP, the government side, and 3 from the ALP, the opposition side. There are 2 of us here today - myself and the member for Ludmilla, Colin Firmin. Your own local member, Wes Lanhupuy, is also on this committee. He intended to come today but he sends his apologies. He contacted us today and told us that there is a funeral at Galiwinku that he has to attend. However, I know that you will have plenty of opportunities to talk to him about this.

This committee is not like many of the things that you hear about the government and the parliament where it seems that the ALP and the CLP are always fighting about things. If we say one thing, the Labor Party says the opposite. This is one job where both the ALP and the CLP are working together. It is a job that is more important than politics. It is a job where all of us are saying that we must get together as Northern Territory people and work on writing this law. We have come to talk to you about what we are doing, what it means and why it is important for you and your community, along with all the other communities in the Northern Territory, to ensure you become involved in this, think about it, talk about it and, most importantly, have your say on what should go into this law. I am not coming here today to say that you should do this or that or that you should have this or that in the constitution. I am here to say that the people from here, the people from Darwin and Alice Springs, the people from the VRD and the people from all over the Territory must together write this law. Our job is to start you thinking about it, to help you to do that and to get one group talking to another group so that, eventually, all the Northern Territory people will come together and say: 'This is how we want this Northern Territory to be in the future for the benefit of our children, our grandchildren and their children'. This is not only for ourselves; it is a long term law.

You know that there are governments in Queensland, New South Wales, Victoria, South Australia, Tasmania and Western Australia and there is a federal government in Canberra. Each of those governments has a constitution. It is a law that stands over the top of the government. We do not have such a constitution in the Territory. Whatever the federal government wants to do here, it can do because we do not have a constitution.

You have developed community government here. You sat down and worked out how you wanted that community government to work. You talked about how you would elect the council and what you would let it do and not do. It has to ask the people about some things and, on other things, it can make decisions. Is that right? It took a long time to determine how you would go about the elections and all the rest of it because you wanted to work out how you would manage Angurugu for the future. When you write a constitution, you do the same sort of thing except that you are doing it for the whole of the Territory, not simply for one town. The people have to make the rules for the Territory. You have to make the rules for electing the government. What is the government going to look like? What can the government do? What things should the government not be allowed to touch? What are you going to let the courts do? What will you not allow the courts to do? We write the important things for the Northern Territory in a special law called a constitution. That is the people's law which sits like the boss over the top of the government. It

makes the rules for the government and the government cannot break those laws. If the government wants to change those rules, it has to go back and ask the people. If the people say that it cannot change them, then the rules stay. It is a much stronger law.

In many ways, it is like Aboriginal law. It is there all the time and keeps going the same way. It is the closest that the balandas come to having a law like the law of Aboriginal people. That is because that law stays there and goes the same way all the time. It contains the rights of the people, the important things that you do not want to change and that no government can touch. Without that law, the government can do what it likes. The federal government can do what it likes here. It can tell us what we can have and what we cannot have. With this law, the people say: 'This is where the power is. This is the law'.

Do you remember that, last year, you were asked to vote yes or no to 4 questions in a referendum to amend the Australian Constitution? The government wanted to do some things but it had to ask the people. The people said no and therefore the government could not touch it. That is how a constitution works. At the moment, our government is there and we can make laws this way. You change the government and that new government might go across this way. Then, they might go back this way at another time. With a constitution, the laws in it stay above the government. In it you can determine how the parliament is made up, how you elect the parliament, who has the right to vote. In that constitution, you put the rights that are really important to you and that you do not want any government to touch. It could be your right to vote. How can you stop the government from changing the law and taking away your right to vote? At the moment, you cannot do it.

You say that land rights are really important and that this land is your land. You want to keep this land so that no one can take it from you. How are you going to protect that? You say that you want to protect your right to your freedom of speech, your religion and your culture. You want to stop people mucking around with it. How are you going to do that? What is going to stop any government from mucking around with that? The only way that you can do that is through a constitution. It is the only way. At the moment, you have land rights and it is a strong law. You have your land, your say over your land and there is talk that maybe you may have your own land council in this area. You are talking about it now. Maybe you will have a vote on that. I see in the paper on the weekend that he is going to let you have a vote, eh? You make your decisions on your land. However, without a constitutional protection of some sort, what the government gives, the government can take away. Because we are only a territory, if the people in Sydney and Melbourne change their mind and decide that they do not like land rights any longer and it becomes politically popular to go against them or there is a change of government, maybe the government will repeal that act of parliament and land rights will be all gone.

However, if the constitution says that it cannot take the land away from you, it cannot touch it because that is the people's law, not the government law. That is why, for example, you put in a constitution your right to vote. It is the boss law over the government. At the moment, the federal government, if it wanted to, could wipe out all government and all voting in the Territory simply by repealing an act of parliament. There are no guarantees for that act of parliament. We are not a state and therefore we do not have the constitutional guarantees. Indeed, you do not have any guarantees against what the Northern Territory government might want to do.

I have to make one thing clear: this constitution will determine where we want the Northern Territory to go, the direction in which we want to take the Northern Territory. When you have done that job and know what you want and where you want to go, only then can you start asking whether you want to become a state or not. You cannot decide that now. I cannot decide that now. I am not asking you whether or not you think that we should be a state. I am not asking that question because you cannot even think about that until you have done this first job. When you finish that, perhaps then you can say that we should become a state in 1 or 5 or 10 years. However, until you have done that, you do not know what you want. That job tells you what you want and where you want this Territory to go. That is the job that, as the Northern Territory people, we must start doing now. When we finish that job, then we can ask whether we should become a state and, if so, when.

There are 2 separate questions. The first relates to what we want. Let us make the rules, the people's laws and work out where we want to go and then we can ask whether we want to become a state and talk to the federal government about Senators and all those other things relating to the transfer of powers and the making of a state. That is a separate question. But, if I went to Canberra now and said that we wanted to be a state, the federal government would ask how I wanted it to work. I would have to say that I do not know because I have not asked the people yet. Therefore, the first thing that we have to ask you is what you want and how you want it to work.

I will tell you how we intend to go about this job. At the moment, I am going around saying: 'It is important that we do this job, not just for you and me and not just for the next 2 or 3 years. When we make this law, it will be there for our grandchildren and for their grandchildren'. This law will keep on going. It will give direction. Thus, you will be making decisions now that will affect people in 100 years time. Maybe we can find a way through this by getting all the people talking and working together side by side with a bit of respect for one another. We need to work out how we can have Aboriginal people, white people and other people in the Territory going along the same road with respect for each other's culture. We want to make a future in which our children and grandchildren can look back and say: 'Those people did a good job for us. They made a good place for us to live in'. That would be a lot better than their saying: 'Why did they walk away from that job. Why did they leave this mess behind for us to fix up?'

It is the one or the other; there is no middle ground. Either we will fix this up and do it properly or we will leave a mess behind for our children and our grandchildren to try to fix. If we care for our children and our grandchildren and their children, if we care for the future, we will do this job and we will do it properly. If you do not care about them, we will sit back and have a good time, but they will condemn us for not having done the job. We all have the opportunity and the responsibility to do it now. We must become involved and work hard at it. We cannot say: 'Oh, let someone else worry about that and come and tell us later'.

It is your law. It is important that you make sure that this will be right for you and your people. You must be involved right from the very beginning. That is why I am not saying that you should do this, that or the other. I am asking you to start thinking about it. If you want more information, we will come back and give you more information so that you have a chance to think it through. Talk about it in your community and come to an understanding of what it is all about. Get your ideas together and, later this year or early next year, we will come back and you can tell us what you think should go into this people's law. When we have those ideas from you and from other

people around the Territory, we will sit down and have our first go at it. We will put down what we think the people are saying.

However, I say this to everyone: 'Do not trust the politicians to do this job'. Right? The people have to do this job. We will give you the ideas. We will put down what you tell us. That is why these microphones are here. It is like being in parliament here at the moment. Whatever we say will go down in what is called Hansard. That is the public record. That record is there forever for everyone to read what is being said. We will get together what we are saying, what anyone tells us and any submissions that we get and write up a draft, a suggestion.

The second thing that we have to do is to come up with some suggestions for the forming of what is called a constitutional convention. That is a big committee of people from all over the Northern Territory. Representatives of the people will come together and look at what we have done. If they like it, they will say yes. If they do not, they might change it and say that that is what they think the people are saying. They will look at all the material that we have gathered. Representatives of all the people will be there. They might have to meet once, twice or 10 times. It does not matter how many times that they keep coming and going to their communities and talking. Eventually, they will come up with a recommended constitution, a proposed constitution. That proposed constitution will go back for all the people to vote yes or no. If the people vote yes, that will be the law. If the people vote no, we will have to start work again and keep on working until we get it right and the people say: 'Yes, that is what we want'.

You can see that the job will not happen quickly and it will not be easy because there will be a lot of arguments along the way between different people. What you might want, other people might not want. However, if people talk and try to work out the differences, they will get something that they can both agree on. Okay? That is not new to you. You do that all the time and we have to do the same thing for the whole Northern Territory. People have to think about it for themselves and also for other people. Talk, talk, talk and try to make a law that will reflect where we want the Northern Territory to go. That is how we will make a good place for our children and grandchildren. It is not an easy job and it will not be quick, will it? It will take a lot of time but, as I say, you have to start somewhere. A long march starts with a first step.

All I am doing today is taking the first step and saying: 'Now we start'. I am asking you to start to think about this. Maybe in 3, 5 or 6 years, we will have something that will be good for all the people. It does not matter how long it takes. The important thing is to do this job properly. It is important that you become a part of this and have your say in this job because it is a job for everyone. Everybody has to be able to say: 'Yes, that is where we want to go'. Okay?

I guess that I have said all I need to say. Col, do you want to add anything? I have to say one more thing. This little book gives some ideas. We put some cartoons and other stuff in it to make it a bit straightforward. When you have had a look at that, you will realise that it asks a lot more questions than it answers. We have been working for about 3 years now on getting ideas together from all around the world. We produced this thick book and we will leave copies of it for you. We looked at constitutions all over the world. We looked in the West Indies, Canada, America, Africa and all around Australia to get different ideas. There are things in this discussion book which we think are good and others that we do not like. We put them all in there. There are

things in there that you will like and things that you will not like, but they are all ideas for you to think about. They are the sorts of things that can go into a constitution.

There are some things that you have to put in there, but there are different ways of doing it. For example, you have to put in there how the parliament is to be made up. But, what sort of a parliament do you want? How do you want it to be elected? Those are the sorts of things that you can decide in this. This is the first time ever that the people in the Northern Territory have been asked how they want the Northern Territory to work rather than our all being told by some government in Canberra or maybe by a government in Darwin. This is the first time the people are being asked how they want the Northern Territory to work. This book is there. There are 2 others there. One is just on the constitutional convention. Those are only a couple of ideas. There could be heaps of other ways of doing it. That is to start you thinking about it, that is all. That one is about the different ways that you go about making a state. They are just there for information.

As I said, if you have any questions, please ask them now. If you would like to make any comments now, please do so. If I can get you to say that you want to think about this and work at it, then I think that I have done my job today. Our committee and support staff are available if you need more information. Ring us up and we will send it out or someone will come out and explain to you different things that you might want to learn about.

Col has just reminded me the Office of Local Government people are there too. They come around here pretty regularly. If you have any questions, you can also talk to them about it and they can chase up information too. Maybe they can answer some questions too.

Mr NUNGGUMAJBARR: As you know, we are still fighting to have our own separate land council. I just want to know whether that will be affected by this constitution.

Mr HATTON: How that happens is really a matter for the people. First of all, if we write a constitution up, it might be that people put in that constitution a special protection for Aboriginal land rights. How far you go with that is a matter for you to decide: whether you just put that in or you say that the Land Rights Act will be exactly as it is now or whatever. Maybe you will just take the core of the act, the main thing, protection of Aboriginal land ownership, and put that in. That is something that has to be talked through. If you do not trust us to protect your land, that is the way. If you do not trust the government and you want to protect yourself, you do it in the constitution. That is how you protect yourself from the government. That is what constitutions do.

What we have been saying is that the Land Rights Act should become a Northern Territory act when we become a state. However, we are saying that what that act should look like and how it should work is a question that we ought to ask the Aboriginal people. Do you think the act is perfect the way it is now? Do you think it works really well?

Mr NUNGGUMAJBARR: Yes.

Mr HATTON: No changes?

Mr NUNGGUMAJBARR: No Changes.

Mr HATTON: Leave it exactly the same as it is? That is fine if that is what you want. Do you think it would be better, for example, if the minister had no say over what happens with your land and you can make your own decision on that? That would mean changing the act, would it not? Take your right to have your own land council at the moment. You have to go and ask the permission of the minister, don't you? Do you think that you should have to ask the minister for that or do you think you should be able to make that decision for yourself? I do not know the answer to those questions. I am just asking you to tell me. Maybe there are ways in which you can improve the Land Rights Act and make the decision-making better and closer to the traditional owner in relation to saying yes or no about things concerning that land. I do not know.

There is a book here. This is not my committee's book. This is from the Northern Territory government and it is called 'Land Matters on Statehood'. It talks about different ways in which you can deal with the Land Rights Act on statehood and how you can protect the Land Rights Act on statehood in addition to the constitutional way. I will send a copy of that book to you and you will be able to read what it says. However, I can tell you that the first thing it says is that there is a guarantee of Aboriginal land rights from the government. Now, it is simply a question of how you ensure that it is not going to break its word. I know that there is not much trust there.

Mr NUNGGUMAJBARR: Some politicians.

Mr HATTON: Yes, that is right. I understand that. I am not dodging that. I am saying that that is a thing you can talk about in relation to a constitution. Look at this, look at the constitution and work it out. It is not only that. There are other issues that are important to Aboriginal people. There is the protection of sacred sites, Aboriginal law, culture and language. They are all important things. They have to be talked through, they have to be talked about in relation to the constitution. Maybe they are things that you should protect in the constitution.

Mr WARD: Steve, I think what concerns Bobby - and tell me if I am wrong Bobby - is that, already, the people here are working for a separate land council for themselves and there is concern that this constitution business might push that land council business further back.

Mr HATTON: No, it cannot do that in any way.

Mr WARD: Is that what you are thinking Bobby?

Mr NUNGGUMAJBARR: Yes.

Mr HATTON: It cannot affect that. I reckon it will be at least 5 years before we have even have a constitution and, after that 5 years, we then start talking about statehood. You are talking about having a separate land council now. That would all be in place before we have done this job, wouldn't it? It will not affect what you are doing now at all. What I am saying is that, if you got your own land council here in east Arnhem Land - here, Ngukurr, Numbulwar and that area - then maybe you would want to do it differently from the way it has been done in the past. I do not know. If I were a landowner - this is me - I would not want somebody telling me what I can do on my own land. That is my business. I will be honest with you, if it were me, I would be saying that what I do on my land is none of bloody Gerry Hand's business. That is what I would be saying.

I think it is a matter for the traditional owner to say what he wants to do on his land. Okay, you might build protection in there to stop people being exploited and ripped off although I do not think that your community would be. However, some communities have been and you do not want a repeat of what happened in Alaska where the Inuit people ended up mortgaging all their land and losing it all. Or what nearly happened at Yarralin. You do not want that to happen either. You have to build in some protection for the ongoing community rights to the land. But that does not mean that Gerry Hand knows more about what should happen on your land. Are you telling me that it is right that, because Terry Yumbulul wants to put that tourist venture on his own land at Wigram, he has to get a lease off the Northern Land Council to do it? That is stupid. That is crazy stuff.

Mr NUNGGUMAJBARR: Where is that?

Mr HATTON: Up in Wigram Island. You know Terry Yumbulul?

Mr NUNGGUMAJBARR: I have never heard of him. No.

Mr HATTON: That is happening now. He has had to go and get a lease off the land council for his own land. He pays \$1 a year for the lease and then the land council sends him \$1 a year income on his land. That is going in circles. It making work for a bunch of clerks in the land council.

Mr RAINER: Perhaps by the time this constitution business is settled, the need for the Land Rights Act as far as Aboriginal ownership of land is concerned, will have all been settled.

Mr HATTON: Who owns what will be. Yes, hopefully.

Mr RAINER: Yes. And then, the only thing the constitution needs to enshrine is the individual's right to do what he wishes with his land. That becomes not just the right for an Aboriginal but also for a European or a Chinaman or whoever has the opportunity of having freehold title to land within the Territory. Everybody then should be treated on exactly the same basis. I am not talking about sacred sites problems for Aboriginal people etc. I am talking only about the ownership of the land and how to deal with it.

Mr HATTON: I agree that that is an issue that has to be sorted out. But you do have the other complications of the special type of community title.

Mr RAINER: Yes. That protection has to be written into it because the type of ownership is different.

Mr HATTON: Yes, that is right.

Mr RAINER: And that is the exploitation side of things that you mentioned before. That needs to be protected against. But, so much is moving so fast these days that, hopefully, we are moving to a state where we are all be ...

Mr HATTON: Equal.

Mr RAINER: ... equal in all things.

Mr HATTON: That is right. What we will all find in doing this job is that it will force people to talk to each other about all those really hard questions. It means that you will have to explain to the people in Darwin and Alice Springs why your culture, land and law are important. Those people are not anti. Many of them simply do not understand. They just hear the spokesmen making noises and they do not understand what is going on. And it is the same the other way round too. I go around and talk to people like yourselves and people tell me why certain things are important. I go around Darwin and people tell me things. It seems to me that all the people are really trying to reach the same point. Both groups want to get to where they can stand side by side and stop fighting. That is what people in Darwin and Alice Springs want. They do not know how to get there. I go round the Aboriginal communities and they say the same thing. Maybe, if I get you all together in the one room and you have to talk to each other about it, you will find out that we can get there by travelling down the same road. But, each would be on his own side of that road. The Aboriginal people want to protect their culture, religion and law just as the white people want theirs, but that does not mean that they have to be fighting each other. It will make people come to terms with that and work out how they will live together.

Mr BROWN: If this will recognise Aboriginal law on Aboriginal land, what will happen if there is a conflict between Aboriginal law and European law?

Mr HATTON: I am not going to say what can or cannot be. It is possible for the constitution to deal with that question. Those are the sort of things that people need to talk about and come up with suggestions. I am not going to tell people what they can and cannot do in their own constitution. But, it is possible. Graham, do you want to add to this? You can write into there a provision to protect the ongoing role of Aboriginal law and the extent to which it has an effect. We have had some communities tell us that they want to write into the constitution that every Aboriginal person must be subject to Aboriginal law - no choice - and, when the Aboriginal law is finished with them, then the white man's law can look after them. That is a pretty hard one, but that is the view of some of the old men in some of the communities. That will have to be talked out. You could write it in if you wanted to but you will have to live with the result. Once it is in there, it will be there always unless you get a vote of all the people to take it out and that is really hard. Whatever you put in there becomes very strong law.

I am trying to honestly answer how we are going about doing it. I will not say that you can do this or you cannot do that except where it is legally impossible. For example, you cannot declare the Northern Territory to be a republic because that would be in conflict with the Australian Constitution. There are things that you cannot do. You have to fit within the national constitution. However, within that, it is up to the people to make their own law. It could be a thin document with only the basics in it or it could be a very thick document like the New Guinea constitution which goes into fine detail. That will come out as people think about it and start talking to each other about it. That is why it will not be a quick job. That is why I will not prepare a draft constitution to put in front of you to argue about. I will issue discussion books and place ideas before you but I am not going to tell you what you should have. This is one time that it has to come from the people.

Mr NUNGGUMAJBARR: How will what our people say be put in the book for discussion?

Mr HATTON: We will come back later this year or early next year as a full committee. We will come here so that you can then tell us what you want. We did not try to do that this time because now is the time to start thinking about it. When you have had a good chance to do that, later this year or early next year we will come back and then you can tell us what you think.

If, between now and then, you want to know more about a particular aspect, you can give us a ring and we will get someone to come out here and talk to you. This man here, Mr Nicholson, is a constitutional lawyer. If you want to know whether you can legally do this or that, we will get him or someone like him to come and talk to you about it. You do not need to have the politicians along.

Mr NUNGGUMAJBARR: It is up to us. I think now we have seen your select committee come to our meeting to discuss this constitution, I think we now need a bit of time for the community to give more thought to this. Maybe, if we need any help or information, we will probably ask you to get someone to get back to us. I think for now we will just have to leave it and give us time to think about it.

Mr HATTON: Good. I would feel happy if you would start to do that. I cannot emphasise sufficiently how important it is for you not turn your back on this job.

Mr BROWN: Is there any idea at this stage how the government will be formed once the constitution is established. Will there be 2 Houses or 1 House?

Mr HATTON: That is one of the questions that we have asked. This discussion booklet raises questions such as that. It is a bit like a reference book.

Mr BROWN: Yes, but is the federal government or state government ...(inaudible).

Mr HATTON: The recommendation from our select committee is that we have a unicameral system, the same as we have now. We have put in there also the option of the 2 Houses or what is called a bicameral parliament. It sets out the arguments for and against both systems. However, it is our recommendation that we stay with a single House. I guess it is a philosophical argument whether you have 2 or 1 Houses.

Mr RAINER: Have you given any thought to changes in the system of parliament that do not exist at present?

Mr HATTON: To what sort of system?

Mr RAINER: Doing away with the 2-party system in the parliament. Instead of the party electing its party leader, we could have a system whereby, as part of the electoral process, the people elect the person to be the Prime Minister and/or a deputy. Then, every other member who is elected into the House is a part of the government so that avoids the inter-party fighting which exists in our parliaments at the moment. It does not matter whether you look at the original Westminster system or our own parliament in Canberra or any of the state parliaments, most of the time of members is taken up with fighting each other instead of working for the benefit of the people. I believe that, with the Territory being of the nature it is, independent people with independent ideas, it is time perhaps to try another form of parliament whereby the party system exists outside as far as

the provision of candidates to stand for election is concerned. However, once the House is elected, every member becomes a member of the governing parliament and works for the benefit of the people in the parliament, not for the benefit of the party. If they do not perform, in the normal electoral process the people have the opportunity to put them aside and try somebody new. But, the basis of the thing is that everybody's best endeavours are used for the benefit of the community as a whole. Everybody must agree that, with our present system, we make do at times with ministers and members of lesser quality than some of those who are sitting on the opposition benches achieving nothing.

Mr HATTON: Could I just pick up a few points there. Broadly, there are 2 sorts of parliament. One is responsible government whereby the government is responsible to the parliament and the parliament is responsible to the people. We call that the Westminster style of parliament. You create that level of responsibility by electing members into the parliament and then somebody, who has the confidence of the parliament, is invited to form a government. Technically, that is how it happens. The reality is that, if I have more supporters in the parliament than you have, I can win the votes in the parliament and therefore I have the confidence of the House and therefore I can form the government.

Mr RAINER: We have seen the effects of that in the Northern Territory government in the last 5 years with a new Chief Minister every year.

Mr HATTON: Not quite every year, but not far off it.

Mr RAINER: It has not been far short of it.

Mr HATTON: That is part of it. That is right.

The person forming the government will select people to form a ministry. In the last century in England, when that system was evolving, the leader sometimes chose people from the opposing party. Actually it was with the creation of the Labor Party in Australia and the labour movement that the concept of party solidarity emerged and that led to the locking in of party strength. In the days when there were conservatives and liberals and no labour party, they used to pick from all over the place.

Mr RAINER: Yes, but in those days the members of parliament only came from one strata of society.

Mr HATTON: Pretty well, yes. Because they were not paid.

Mr RAINER: It was the aristocracy.

Mr HATTON: Because they were not paid. That is right. That is also where the whole concept of party solidarity came from.

Mr RAINER: But, it evolved to a stage where it is not satisfactory now.

Mr HATTON: Let me track on. If you want to pick up the concept of executive government, that is talked about in there. We do raise the issue in that book. That is the system

whereby the people elect the leader, as in the United States. It is executive government whereby the people elect the president or the state governor. You could develop a system here where you elected the political leader. Whether that person chooses parliamentarians or people from outside of parliament to form an executive government is a matter you can write into your constitution if you want to. You can do that and you have the balance of powers then between the government and the parliament which is the sort of thing that you are talking about.

Mr RAINER: Not quite.

Mr HATTON: Well, you can adopt the utopian view that you will get the Labor Party and CLP people picking and not having a war within their own parties and being booted out as leaders. I have to be honest about it.

Mr RAINER: I do not say that a change will be an easy thing to achieve.

Mr HATTON: The question is whether it can be practical. It is technically possible to do that. You can form the sort of parliament you want and determine the method of electing the government. You can write the constitution to determine how this will happen. What you have to argue is whether it will work.

Mr RAINER: I argue that the system at the moment does not work satisfactorily.

Mr HATTON: That is the second point I wanted to talk about because, unfortunately, all people ever see about parliament is what they see in the media. But, I have to tell you that I always reckon that 80% to 90% of the work of the parliament is done by agreement. You only ever hear about the fights.

Mr RAINER: That is what makes news certainly.

Mr HATTON: That is right. But, I believe that, within the system, there is a great deal of cooperation - far more than people realise. I would say that 80% to 90% of the legislation that goes through the parliament is supported by both sides. When we are debating it, the opposition comes up with ideas to improve it and we adopt them. In the debates in the parliament, that happens quite a lot. It is never reported because it is not news. The Labor Party and the CLP working together is not news. The ALP and the CLP fighting is news. But, I would think that 80% to 90% of the day-to-day work of parliament is carried out in a cooperative manner. It really is. You have to sit there and work through it. But, we have our show pony fights and the craziness of question time and the motions of no confidence - all those sort of games that go on in the political process - but, underneath all that, there is a great body of work that goes on. There is the work of this committee and the work of other committees on which we work together and are not fighting.

Mr RAINER: The proof of the pudding is in the eating. The idea is there for discussion.

Mr HATTON: Yes. It is an idea and it is technically possible to pick it up. You could have a system of electing the premier and giving him the right to choose his executive from within the parliament and giving decision-making rights even separate from the parliament, as they do in the United States. It is possible to do that. That is one of the things you can talk about in relation to a

constitution. The opportunity is there to form the sort of government structure and parliamentary structure that you want.

Ms GILMOUR: You were saying before, when you were talking about owning land, that, if you owned land, you would not let Gerry Hand tell you what to do.

Mr HATTON: I was speaking personally. Yes.

Ms GILMOUR: And you made it sound like, if there is a new constitution, Gerry Hand cannot tell you what to do. And you made it sound like the NLC might not be able to tell you what to do like what is happening in ...(inaudible).

Mr HATTON: No. I am sorry if I gave that impression.

Ms GILMOUR: Yes. It just sounded like: 'Okay, if you have got a new constitution, Gerry Hand cannot tell you what to do any more'. But, there will always be government and, even though you own land as a private owner or have a community title, or any sort of title, you will always be told what to do by the government in some ways. That is right, isn't it?

Mr HATTON: There is always some ...

Ms GILMOUR: You might be told by Darwin and not Canberra. That is the only difference.

Mr HATTON: No. The difference is that, if I own some land, provided I did not breach any environmental rules or planning regulations, I would be able to take decisions in respect of my own land.

Ms GILMOUR: What about mining law? The government has number one say, isn't that right?

Mr HATTON: Yes it does.

Ms GILMOUR: It does not matter if you own land or not.

Mr HATTON: In the matter of mining tenements, yes. They are usually in respect of who has the rights rather than whether or not you can mine. The Commonwealth government will still retain its export licensing power. Thus, after statehood, we could have control of uranium under our own legislation, for example, and the federal government could refuse to issue an export licence. If you cannot sell overseas, you will not open a mine.

Ms GILMOUR: Even if there is a new constitution?

Mr HATTON: It is not open slather.

Ms GILMOUR: That is right. You made it sound like, if there is a new constitution, no one can tell you what to do. But, that is not right.

Mr HATTON: No. What I was saying was that I would find it obnoxious, if I wanted to sublease a block of land or if I wanted to start a particular business venture that did not breach environmental or planning guidelines, that I should have to ask permission from someone else. That is what I meant.

Ms GILMOUR: You should not have to ask permission from the state either. It is not just Gerry Hand who is the problem. It is also the state.

Mr HATTON: The state, anyone. That is a personal view. If I want to plant trees in my backyard, I will plant trees in my backyard. I will not go and ask someone's permission.

Ms GILMOUR: The constitution does not protect you from that sort of thing anyway because the parliament could still make those acts.

Mr HATTON: Yes. Well, there is an extent to which ...

Ms GILMOUR: Unless you put something in the constitution to say that it could not.

Mr HATTON: What you do not tie down in a constitution governments can act on. But, please understand that, at the moment, the federal government can do anything at all. Section 122 of the Australian Constitution, which is the only section that refers to territories, says basically that the federal government can do what it likes, when it likes and that includes acquiring you property without compensation if it so desires.

Ms GILMOUR: And so can the NT government.

Mr HATTON: No, we cannot.

Ms GILMOUR: Can't you?

Mr HATTON: No. The Self-Government Act now prevents us. You could write into the constitution that property could be acquired only on just terms as is the case now under the Self-Government Act. If we become a state, the federal government could not acquire property here except on just terms. The federal constitution provides that the federal government cannot acquire property except under just terms. In a state, it has to pay for it. There are appeals also in the state system which we do not have here. Does that answer you?

Ms GILMOUR: Yes. It just sounded as if there would be no government at all after the constitution, but there always will be.

Mr HATTON: No. There will be government and there will be arguments and there will be political fights. Those things will occur, but at least you can put the foundations in place and determine the basic direction in which you want to go. Put up the walls. Okay, people have to go down that tunnel and they cannot go out both sides. They keep going down that way.

Mr RAINER: As a point of interest, can this constitution be legally brought into effect with the Territory remaining a territory under existing laws or does there have to be a change under a federal act to allow it to become legal?

Mr NICHOLSON: You cannot have a new state unless the Commonwealth parliament ...

Mr HATTON: No, the constitution, can it come in before statehood?

Mr NICHOLSON: No, you cannot have a new state constitution unless you are a state. Well, you can make the constitution but it does not become operative until you become a state.

Mr RAINER: Without a particular act of federal law?

Mr NICHOLSON: You cannot become a new state without an act of the Commonwealth parliament.

Mr RAINER: But, the question I am asking sort of goes with that. If, for argument's sake, it were to be another 10 or 15 years before statehood was achieved, would it be possible, having drafted a constitution, for it to be brought into effect while the Territory stills remains administered by Canberra?

Mr NICHOLSON: Yes. You could repeal the Self-Government Act and introduce a constitution as the constitution of the Territory whilst it is a territory.

Mr HATTON: The federal parliament would have to do that.

Mr RAINER: That is what I mean.

Mr NICHOLSON: You could have that, but it would not be a new state. It would be a Territory constitution.

Mr RAINER: Yes. I realise that. What I am asking is: if this is brought to a head and completed, can it be put into effect for the benefit of citizens before statehood?

Mr HATTON: Only by federal legislation.

Mr NICHOLSON: It would still require an act of the Commonwealth parliament.

Mr HATTON: It would effectively mean changing the Self-Government Act to make the constitution the core of the Self-Government Act.

Mr RAINER: Right.

Mr NICHOLSON: In fact, there may be some advantages constitutionally in doing it that way.

Mr HATTON: Yes. Very much so. We were debating that this morning. The one problem is that we have to find a way to have the constitution in operation before we become a state because, by doing that, we think that it will prevent the federal government from being able to interfere with it after statehood has been attained. It will remain the property of the Northern Territory people because it will be in existence first.

Mr RAINER: Is that the essence of doing it now?

Mr HATTON: That is right. It will become the Northern Territory people's property and the federal government will not be able to muck around with it. You can let your imagination run pretty wide on this, can't you?

Mr RAINER: You definitely could.

Mr HATTON: You would be amazed how many of the ideas are in that book.

Does anyone wish to raise anything else or are we all talked out? Thank you very much for having us along. I appreciate that. I look forward to coming back here later in the year or early next year when you can tell us what you think should be done. In the meantime, let us know if you want anything. Thank you very much.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

NUMBULWAR — Wednesday, 3 May 1989

PRESENT:—

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Samuel NUMAMURDIRDI
Mr Lindsay JOSHUA
Mr Mujji NUNGGARRGALU

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 14 MARCH 1991

Mr HATTON: My name is Steve Hatton and I am the chairman of this committee of the parliament of the Northern Territory. It is called the Select Committee of Constitutional Development and its job is to start work with all the Northern Territory people on writing a constitution for the Northern Territory. We have come here to tell you what we are doing, how we are going to do that job, and to try to explain why it is very important for you and for community to be part of this job and to make sure that you have your say in the writing of this law. This law is different from most of the other sorts of laws that you hear us talking about all the time because this law is the people's law. It is made by the people and it sits over the top of the government and becomes like a boss over it. This people's law tells the government what it is allowed to do and what it is not allowed to do. It contains those rights that are really important to people and which they do not want the government to be able to muck around with.

This law is one that the government cannot change. It sits over the top of the government and it is a boss over the government. The people tell the government what it can do and what it cannot do and the government cannot change that. The only people who can change that law are the people themselves. Do you remember that, last year, you were asked to vote on the federal constitution? You had to vote yes or no to 4 questions. That is when the federal government in Canberra wanted to change the constitution for Australia. But, it was not allowed to do it itself; it had to ask the people. When the people said no, it could not touch it. The law stayed the same.

All governments in Australia - the government in Canberra and the governments in Queensland, New South Wales, Western Australia, South Australia, Victoria and Tasmania - have a constitution over the top of them. But, the Northern Territory does not have one of those. We do not have a constitution. No one has ever asked the people in the Northern Territory how they want the Northern Territory to work. They have never asked you that before; they have always told you. The government in Canberra or the government in Darwin always tells you to do this or that or something else. No one ever asks the people.

For the first time ever in the Northern Territory, we are going to the people and telling them that we want them to write this law. We want you to tell the government how you want this Northern Territory to work. That is what our job is. You hear talk about balanda law changing all the time, how it goes this way one day and, the next day, it goes somewhere else. You change the government and it changes the law. It goes backwards and forwards all the time. Many Aboriginal people say to us: 'Why do the white men do that all the time? Why can't they make the law like Aboriginal law which is there all the time and goes the one way all the time so that everyone knows where he is supposed to be and what he is supposed to do. Why can't the white men do that?'

This constitutional law is like Aboriginal law. It is there. It does not change. It keeps going ahead. It says how you live and work together and what your rights are that the government cannot touch. It sets out how you elect the government and that stays there. Through this law, you say how this Northern Territory is going to work for your children, for your grandchildren and for their children. If we do this job together and get it right, then we can say that we have made the Northern Territory a good place for our grandchildren and for people in 100 years time. That is what this is all about: making that sort of law.

It is not like the other laws. It is an important law which will be there for a long time and the government cannot muck around with it. That is the job that we have come here to talk to you

about. We are not here to ask you what you think should go into to this law. Today, we have come to ask you to start thinking about it. We want you to start talking among yourselves in the community, get your ideas together and, later on this year or early next year, after you have had time to think about it, we will come back and you can tell us what you think. We are not doing this only here; we are going all over the Northern Territory. We have been travelling everywhere. We have been to Kintore and Docker, down in Pitjantjatjara country, and across to Finke. We have been up to the VRD. We are coming across to Arnhem Land. We are going to Darwin, Alice Springs, Tennant Creek, Katherine, the Barkly and Borroloola. We are going all over the Territory saying the same thing, asking people all over the Territory to start to think about this. When we come back, we want all the different people to give us their ideas, which will be all different, and we will try to work out what we are going to do.

What we will do then - and we want you to think about this too - is that we will get a big committee of representatives of people from all over the Territory because we do not want to write this law for you. We want to bring together people who can speak on behalf of their communities. These people will come together and talk to each other. White people, Chinese, Aboriginals, men and women, will come together to talk about all the problems and how some things are really important to some people and other things are really important to others. They will talk it through and try to come up with some laws by which people can live together as equals, but each still keep his own culture. We will talk about that as the Northern Territory people.

When all those people have talked about and have written a law which they think will do that job, that will be put to the people to vote yes or no. If the people think that it is good, they will vote yes. If they are not sure, they will vote no. If the people say no, we will have to go back and start talking again and keep talking and working until we get something that the people can say yes to. Then, we will have a law to stand over the top of the government and make it go the way that the people want it to go. That is how we will make the Northern Territory a good place for our children and grandchildren.

But, I cannot do this job for you. You have got to do this job for yourself. You have a responsibility to your grandchildren and to your great grandchildren. You have a responsibility to work on this and to make sure that, when this law is written, it is a good law that will make a good place for your grandchildren. That is why we have come here to explain what we are doing and how we are going about doing it. We are asking you to take this really seriously and to really start thinking about this, talking about it in your community and getting some ideas together. If you are not sure what we are talking about or there is something in those books that you do not understand or want to know more about, give us a ring or write to us and tell us to come out here and explain it to you so that you understand. Then, you can go away and think about it again until you work out as a community what you think should go in this law. Then, you make sure that you have your say in writing this law.

We have come here to explain that to you. This book here has just a couple of things in it. If you look in the back, you will see some pictures of people. This committee is different from many of the things that you hear about in relation to the parliament and politics. It always seems as if the Labor party and the CLP are always fighting each other - it looks that way sometimes, doesn't it? On this committee, there are 3 members from the CLP, the government side, and 3

members from the ALP, the opposition side. There are equal numbers. We are side by side this time.

Your own local member, Wes Lanhupuy, is a member of this committee and he is working with us on this job. We are working together. We are not fighting. All the Territory people - white, black and yellow - are going to work together to get this law right for all our people, to get some law that will determine how the Territory will be in the future.

If we do not do this job, our grandchildren will ask why we did not do this for them, why we did not make the Territory a good place for them to live in, where everyone can have an equal chance and go forward together, side by side as equals with respect for each other. If we do this job, they will look back and say that their grandparents were great people because they did this job for them. If we do not do it, they will look back and say that we failed them. That is why we must do this. We cannot walk away from it. You cannot walk away from it and I cannot walk away from it. I am asking you to make sure that you have your say on this one and ensure that your needs are looked after in this law. You must be involved right from the very beginning and build up with it. Thank you very much.

Mr NUMAMURDIRDI: (Kriol and Nunggubuyu languages)

We gotta take (unclear) this man bla speaking langa come up today. You mob bin understand what I saying here? Would you might ask him any question can ask him me another day. Because no use me explaining gurrur Wubuy because Wubuynga-malaladiyina somefella Wubuy. But I think he bin talk real plain um about this book na. This book we gotta start get together na like another mob community, we gotta get together. And we are going to talk about this thing now. Give ourselves a lot of talk, la caution we bingo. We have been getting a lot of letters from other mob communities like from Goulburn Island. That is the government here la Darwin they gotta, they gotta makim own government la this Northern Territory one eh.

So we gotta start talk about now, we gotta start ... we gotta have our say. We gotta purrum we own. We gotta make our own wani we wantim gotta happen bla we ... bla Aboriginal people bla this community bla all the community in the Territory. So that's the one we gotta, we gotta think of because you know it can't happen this year or next year, but it'll be coming in soon.

So start ngambuyambiyinjina na. We gotta start talk about. But if you mob wantim askim any question iya.

We should thank (unclear) this man for coming up here today. You mob understand what I am saying here? You might like to ask him questions, or I can ask him another day. There is no use me explaining in Nunggubuyu because I don't understand Nunggubuyu. I think he's spoken clearly about this constitution. We have to start looking at this book together like other mobs have been in other communities. We have to get together, and we are going to talk about this (constitution) now. Let's talk about it a lot and talk it over very carefully. We have been getting a lot of letters from other mobs in communities like Goulburn Island. This government in Darwin now wants their own government for the Northern Territory.

So we have to start talking about it now. We have to have our say about this one. We have to make our own (unfinished sentence). We have to make up our own ideas about what we want to happen for us, all of this community and the entire Northern Territory.

This (constitution) can't happen this year or next year, but it will happen soon so let's start talking with one other now. Let's start talking about it.

Do you want to ask any questions?

Mr JOSHUA: (Kriol language)

I think I met Terry at Mataranka last couple of months ago, Steve sorry, and dijan iya we tok tok blanga Statehood, Statehood dijan Territory blanga we today. We im nomo langa Statehood today natjing. I'm still sit down meself. I can't talk Nunggubuyu, but I talk Pidgin. Pidgin ngi. You mob understand Pidgin English? Like they gottim now la Queensland?

Now look here. Almost 4 state now today, Queensland, Western Australia, New South Wales, that's a different - a state also. 4 bala im breakim meself like 4 corner they just sit down like a paddock like i jat. Other mob can they call it state today state Australia. We sit down langa Territory. We nomo gotim that state. That's why today they come up is explaining bla blackfella. Tellim bout we what gotta happen. Not today or not tomorrow. This gotta come long time yet. Everybody gotta agree. Blackfella, Yellowfella, Chinaman gotta agree to help this Statehood langa Territory. They nomo pushim la we straight away dijan here. You mob gotta join in straight away tomorrow la Darwin. We got to have this Statehood straight away la Darwin. Now. They come on here to talk la we and explain la we.

Only thing, Terry Smith im nomo savvy talk Nunggu ... garri Wubuy him only talk, only talk English. That's all, because lot of our people don't understand him what him talking while I'm ... me talk now Pidgin English. I'm pretty sure that you must savvy Pidgin English. Thank You.

I think I met Terry at Mataranka a couple of months ago, Steve sorry, and we talked there about this matter of Statehood, Statehood for the Territory, which belongs to us. We haven't got Statehood yet. The Territory is out on its own I can't talk Nunggubuyu, but I'll talk Pidgin (Kriol). You know Pidgin (Kriol)? Do you understand Kriol? Like they have in Queensland.

Now look here, there's almost four states now, Queensland, Western Australia and New South Wales. That is a different (not clear) a state also. Those four are broken up into separate places, just like a paddock is divided up. Other mobs can call themselves states today. State Australia ... (not clear). We people who live in the Territory don't have Statehood yet. That is why they (the committee) have come here today to talk with Aboriginal people to tell us about what is going to happen. It's still a long way in the future. Everyone still has to agree, Aboriginal people, Aboriginal people of mixed descent and Asian people have to agree first before we get Statehood for the Territory. They are not pushing us but we've got to

join in now with Darwin to get this Statehood started. They've come here to talk with us and explain this to us.

Terry Smith doesn't understand Nunggubuyu, he only talks English.

That's all. A lot of our people don't understand what he is saying. I'm speaking Kriol and I'm pretty sure you understand Kriol. Thank you.

Mr HATTON: Yes, I am not asking you the question about whether you think we should be a state or not a state. I am not asking that yet. How can you ask that when you do not know what you are going to have? How do you want it to work? How is this going to work? You do not know. We have not written the law. We do not know what we are going to have when we become a state. The first job you have got to do is to write this law. After you have written this law and everyone agrees with it, and I reckon that job will take maybe 3 or 5 years, then you can ask when you want to become a state. Will it be another 5 or 10 after that time? I do not know. It is the people who will have to say when but they cannot even start to think about that until they have this law because this law tells them what they are going to get. That is the first thing. You must take the time now to think about this.

There is only one point that I want to make. Okay, we are not saying statehood now. But, I want everyone to understand that one day - maybe it is in 5 years time or 10 years time or 20 years time - the Northern Territory will be a state like everyone else. I do not know when that will be, but I do know that we have got to have this constitution first. We must take the time now, because we do have the time, to do this job properly. That is why we are starting now on the job of writing this law that we will put over the top of the government. We have to get that one working properly first.

Mr NUMAMURDIRDI: Everybody understand? We are not talking about statehood business yet. We are talking about this law we have got to bring in, the people's law of the Northern Territory. That is the first thing we have got to worry about. We have got to have our say and we have got to put in what we want for this Northern Territory or community. That is the first one that we have got to think about. All this statehood business and all that can come later, not next year, not until 5 or 6 years or 10 years time, just like he has been saying here. Does anybody want to ask any questions about making this law?

Mr NUMAMURDIRDI: (Kriol and Nunggubuyu languages)

All right. That's the one now jaltu nganambuyambina warra-wurru-wurruj blanga dat. Nga-mburru-wijangayinyung and nga-mbuyambijina wurrugu long time yet, marri after tharran ja jiya, if we, if we setim up something. If we setim up or make a law bla we, we singout langa olabat gi-gin next time they come back. And they, the government talk la we gi-gin. Tharran now they bin talk. You want tok dijan?

All right? That's the one now I'm going to talk to all of these people about this constitution. First, we are all going to think about it and talk about it together for a long time. After that we will set something up. If we set it up or make a law for us,

we will tell everybody to come back again for another meeting and the government will talk with us again. That is what they have been talking about now.

Mr JOSHUA: (Kriol language)

Right, I do not think we got enough time here this ... you mob munanga been come up today. Him only short time. I would not mind asking the Chairman now and the Town Clerk and ask one of these men to come back here and stay and talk to us here for 2 or 3 days and explain to us, explain what gonna happen. This is very, very important, all right. It might happen in 5 years time. Might be might happen when our children's children - maybe our children's children this thing will happen. I do not know lot of thing here to be honest because sometimes I do not agree with the Statehood. I can tell him that today. But I leavim la you mob because you don't know what's gonna happen and you mob don't know what really a Statehood mean. Thank you.

Anybody any more to say?

Right. I do not think we have enough time today to talk to you mob of Europeans who have come here. We only have a little time. I would not mind asking the Chairman, the Town Clerk and some of these men to come back here and stay and talk to us for two or three days to explain what's going to happen because this is very, very important. All right? It might happen in five years time, it might happen for our children's children. I do not know a lot of what is going on here. To be honest I sometimes do not agree with Statehood. I can tell you that today. I'll leave it up to you because you don't know what's going to happen and you mob don't know what Statehood really means. Thank you.

Does anyone have anything more to say?

Mr NUNGGARRGALU: (Nunggubuyu language)

I want to explain you people. I myself, I do not really understand anaani yamba. It is difficult for me to understand. So anaani today we are asking these people, these two here or whoever will come back to us ngambambi explainingdhi more. To explain more to understand what to start and anubani after what will come.

I want to explain to you people I myself do not really understand this one. It is difficult for me to understand. So here today we are asking these people, these two here and whoever to come back to us so they can explain to us more so we can begin to understand what all of this means.

Mr HATTON: I agree with that. We would be really happy to come back and spend time to talk about it properly over a day, 2 days or 3 days if need be, whether we all come or just one of us comes or whatever. Also, talk to Wesley Lanhupuy about it too when he comes here. He is on this committee. You should talk to him and get him to talk about it too. But, I would love to come back. I would love to come here and spend a couple of days talking about this. I really would.

First, you have a look at what we have given you there. Read about that and talk a bit so that, when we come back, we can build on that. Okay? But, I will come back. Okay?

Mr NUNGGARRGALU: But, we do not understand. My people do not understand what you are saying. We will sit down with you and you explain to us because this one is not only for 5 minutes. You tell me now I will understand in 2 hours. It cannot be, because we will be long, long way coming in the future. We need more story. You will explain to us more. If we understand, then we will tell you. Europeans do not understand the same thing like we would.

Mr HATTON: Europeans do not understand it any more than the Aboriginal people, I can tell you. It is a really hard job just to start. We are all starting right down there.

Mr NUNGGARRGALU: We cannot come up because we do not understand.

Mr HATTON: This sort of job has not been done in Australia for 100 years, not since the last century. Therefore we are all feeling our way on how to do it and trying to work it out. But, I say this: you know your law, the Aboriginal law, and you know that law is there and it keeps going the one way all the time, doesn't it?

Mr NUNGGARRGALU: I will ask you a question. This law is good one or what? Is it a good one or bad one to us, Aboriginal people?

Mr HATTON: It has got to be a good one for Aboriginal people and for white people. It has got to be a law that says how white people and Aboriginal people are going to live together and go forward together side by side. We have got to write it. There is not a law there. We have got to start thinking about what we want in that sort of law. How are we going to sort out these arguments all the time?

Mr NUNGGARRGALU: Nobody, you and me, want argument all the time.

Mr HATTON: No, we have to find a way that we can live together, haven't we? We have to sit down and talk about how we are going to live together and make a law that says we are going to live that way - together. And that is what this job is.

Mr NUNGGARRGALU: (Nunggubuyu language)

Yaaga gurruwaj. You mob understand nurru mabuy Anaani, this is not our way, everybody knows that. Not the blackfella's way. This is European and they making this visit to Australia roll im like a swag. We are rolling. All these laws. Law every year. Law every six months. Law. We have got to understand. Nurru mabuy. It's not fun. Naagi nanigi my son, my son, my son. This one will continue.

What we are saying here we are going to come up through two together whatever colour - red, white, black, blackfella will come one law together. Because that whitefella now, whitefella people you make law every year, every six months. Canberra make that. Canberra people making law all the time. We do not want this one good one. We chuck him away. We want that rubbish one to bring it back like that. We don't want that rubbish one. Bring it back. We want im that good one. Chuck it out ... good law out. That's the way they do. So we sit down.

What now? You mob understand? This is not our way, everybody knows that. This is not the blackfella's way, this is the European's way, and they are making this

visit to Australia (not clear) 'roll im like a swag' (metaphor for 'always changing'). We are rolling. All of these laws. Laws change every year. Laws every six months. Laws. We have got to understand. You mob understand? It s not fun. My son, my son, my son - this will continue for generations, to come.

What we are saying here is that we have to come together on this one, whatever colour - red, white, black, blackfella - have to come together with one law. Because whitefellas make laws every year, every six months. Canberra makes them. Canberra people are making laws all of the time. We do not want it like this. We chuck them away. We don't want those rubbish ones (laws). We want good ones. They chuck good laws out. That's what they do, and we just sit and watch and let them go.

Mr HATTON: We've got to start somewhere. First step along a long road.

Mr JOSHUA: (Kriol language)

Okay Steve, just one thing more. We got photo bla him iya. One fella blekbala photo bla im here. He's a full-blood, Wesley Lanhupuy. Wesley bin there la Mataranka la melabat while we bin have a beeting. Steve, we bin have a meeting couple hours talk there langa Mangarrayi people. But now this place here, la Nunggubuyu people, different tribe again. Maybe a long time to understand. **Maybe a long time to follow you speaking English.**

Okay Steve, just one more thing. We have a photo of him here. This is a photo of a full-blood Aboriginal man called Wesley Lanhupuy. Wesley was at Mataranka with us when we have a meeting. Steve, we had a meeting for a couple of hours there and we were talking with Mangarrayi people. Now at this place here, these are Nunggubuyu people. They are a different tribe again. It may take a long time for them to understand this. It's difficult for them to understand when you are speaking English.

Steve and Wesley (inaudible) Wesley, we understand, most of us here understand Wesley's language. You got English. Your language is English. We got maybe 4 or 5 language that we talk. Some parts we follow your English, some parts we cannot understand. That is why I am saying now that it is better for you to bring a full-blood person here to talk to the blackfellow people here so that we can understand him. All right? You mob agree?

Mr NUNGGARRGALU: Whether we understand him or him going to tell the truth? You will tell us that or he will lie to us or trick us or what, whether he is full blood or what. But, he must tell us the truth. He is a politician too. That Aboriginal fellow is a politician fellow. Politics too much. We do not want politics.

Mr HATTON: We are all saying the same thing. He should be here now.

Mr JOSHUA: (Kriol language)

Yo, he should be here today because last couple of months we talked blanga Mataranka. They bin there langa Mataranka meeting. Garrim gottim these 2 fella here. That blekfella Wesley

Lanhupuy, he been there. He bin talk la melabat blekbala and he bin talk there langa blakbala langa Mataranka langa Mangarrayi people. So please bring him down here next time you come here.

Yes, he should be here today because a couple of months ago when we talked at Mataranka, he was there at that meeting. We have only got these two people here. That Aboriginal person, Wesley Lanhupuy, he was there. He talked to us Aboriginal people and he spoke with all of the Mangarrayi people at Mataranka. So please bring him down here next time you come here.

Mr HATTON: He has business to do in Elcho. That is the problem.

Mr JOSHUA: Yes, big business over in Elcho.

Mr NUNGGARRGALU: The Aboriginal people do not want politics. We are one way. We talk one, we are one. We do not make laws. Law is one, is one. That is what we carry on years to years, to years. I know some political people, Aboriginal people.

Mr HATTON: Yes, I think it would be really good if Wesley Lanhupuy could come here and talk to you. He is on our committee. He will say the same thing to you that I am saying. It would be better if he says it too, then you will see that we are not playing politics with this one. This is not politics.

Unidentified person laughing loudly.

Mr NUNGGARRGALU: Why is ... laughing then? He does not understand. I have been with this way for so many years.

Mr HATTON: Okay, well I am not playing politics with this one. You get Wesley here to talk to you and he will say the same thing to you. I know that. He has been saying the same thing to other people all over the Northern Territory. And you say that he does not tell lies. I agree with you. He does not tell lies and he will not tell you lies.

But, we have come here today to say that this is going to be a long job which we have all got to do together. We have come here to give you some books about it. We will take that first step along a long road. Okay? The next step is that you have a talk about it among yourselves. Step 3 ...

Mr NUNGGARRGALU: (Inaudible).

Mr HATTON: Well maybe, you will decide that way. But, maybe the third step will be that I will come out here and we will talk again. Okay? We could spend a good time talking and get more and more into what it is about. The more and more you talk, the more you say what you want to go into that people's law. That is what we are talking about. I am asking you to do this to help yourself and to help protect your rights in making this law which is a law that will be there forever. It is not going to go away once it is made. It will keep going. It stays. It is a law that you have to get right and make sure that it is in your people's interests and that your people's needs are properly looked after in that law.

Mr NUNGGARRGALU: How long the 4 states been in now?

Mr HATTON: I do not know whether it will be 5 years or 10 years or 20 years. I do not know. How long is it going to take to do this job? I reckon it is going to take a few years to do this job.

Mr NUNGGARRGALU: I mean the 4 states now. How long have they been there?

Mr HATTON: They have been there over 100 years. Since before they made Australia one country.

Mr JOSHUA: That corner there. You mob got any questions?

Mr NUMAMURDIRDI: Okay, we are running short of time. If nobody has any more questions, we might as well close this meeting. Thank you all for coming.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

RAMINGING — Thursday, 4 May 1989

PRESENT:—

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr G BANBUMA
Mr Ray MUNYAL
Mr Peter MILAYNA
Mr John WELUK
Ms Junie THOMPSON
Ms Virginia RUSSELL
Mr Nicholas THACKER
Mr Frank FARLEY
Ms Jeanie McFARLANE
Mr Jim MULHERN

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 5 MARCH 1991

Mr BANBUMA: (Djinang language)

We've got one contact person between the Balanda and Yolgnu people and it's this man Lanhupuy. We all know him and he is based in that place where they make all of the Balanda laws in Darwin. He's the one who's protecting and looking after us and those people on the committee are our partners.

They work at the Legislative Assembly which is an important place, and this constitution that we're going to look at is hard concept to understand. This constitution is difficult because Balanda laws seem to change every day. It's important for us, all of the people in this community at Ramingining and the people from the outstations, to come and listen to this business because it's a big thing for us to talk about, especially when we're talking about mining business. Everybody should speak up not just two or three people, that's not enough power two or three. These laws (political laws) can easily overcome us. We're talking about your concerns, your lives and this place, our place, and if you don't believe what the Balanda laws say then speak up. In some cases those mining people can arrive anywhere anytime and bring their big machines in because this land we're living on has bauxite. They can bring in their big machines and bulldozers, and our houses which are allocated, protected and respected by our family groups and law can still be knocked down and demolished by these Balanda people and their machines, because the Balanda law still doesn't care for us Yolnu people.

If we stand up and talk about these issues then we are acting strong and all of these people who are workers, who are here today are our partners. Our enemies are those people who are in other departments in Darwin.

Mr MUNYAL: (Djinan language)

It's true. We've been around to lots of places for meetings and many people are concerned but are not speaking up.

Mr BANGBUMA: (Djinang language)

My brother, Lanhupuy, who we all know used to work at the Northern Lands Council and now he's working in that big place now (not clear) ... the place where they make all of the big laws, and maybe later on we'll hear (not clear) ... and get shocked by all of the laws that they're making that concern us. Yes, thank you.

Mr HATTON: Thank you for coming along and giving us this chance to meet and talk with you today. My name is Steve Hatton. I am the Chairman of this committee from the Northern Territory parliament. This committee is called the Select Committee on Constitutional Development. You will see at the back of this book that you have pictures of all the members of our committee. This committee is different to any other that has been in the Legislative Assembly before. This committee has 6 members, and they are 3 people from the CLP and 3 people from the Labor Party. Both sides have the same representation. That is because the Labor Party and

the Country Liberal Party are working together on this one. We are not fighting about this job that we are working on ...

A person: For a change.

Mr HATTON: Yes - for a change. We argue and fight about a lot of things in politics, but this time we both think this job is so important that we have to work together to try and make something, as Territorians, for the Northern Territory.

Our job is to help the people to work towards making a special law. It is called a constitution. A constitution law is different from the sort of laws you are used to. You know how government makes the law, and the government changes, and the new government takes the law back the other way, and it keeps chopping and changing backwards and forwards. I know Aboriginal people say: 'Why do these white men keep changing their minds all the time. They go this way, then they turn around and they go back the other way, and they go off that side all the time'. Aboriginal people are used to Aboriginal law and it has been there for thousands of years. It goes one way, all the time, and your law tells you how people live together, what your rights are, what your responsibilities are, and how you live, and it is there all the time.

In a white man's way this sort of law is very much like the Aboriginal law. It is where all the people come together and they say: 'This is how we want this place to go. This is how we want to make this law that is not going to change'. It is a law that is going to stay there and it is going to say how people can live together. The people will make this law and set that foundation down, to say that we are going to go down that road in that direction. That is the way the people want to go.

The people then make a law that is the boss over the top of the government, and that law tells the government what they are allowed to do. It also tells the government what they are not allowed to do. In this way, the people are saying to the government: 'You can do that, but you cannot do that. You must go down that way'. It is a law that says how you go about electing the government, it says who has a right to vote, who is allowed to become a member in the parliament, how the courts work and what they are allowed to do. Also, this law says that there are some things that are so important that no government can muck around with them.

For example, people might say: 'I am allowed to vote, and no government is going to take away my right to vote. So I am going to write in the law that I have a right to vote, and the government cannot touch that'. Or they might say: 'The sacred sites have to be protected. No government is allowed to muck around and upset the sacred sites'. So you put that in this constitution law and that protects the sites, because the government cannot go against it. It is a strong law and is like a boss over the top of the government.

The government in Canberra has a constitution over the top of it. The governments in Queensland, Western Australia, South Australia, New South Wales, Victoria, and Tasmania each have a constitution over the top of them, a law from the people over the top of them. But, in the Northern Territory, we do not have one. We do not have that, and that means that the government in Canberra can do whatever they like, because if you have not got this, the federal government has got total power. They can do whatever they like without this constitution. They can take away your right to vote.

In the Northern Territory, we have the Northern Territory government. That is there because the federal government says we are allowed to have our own government. If they change their minds and say they do not want us to have a government any more, and take that act of parliament away, then there is no government in the Territory. Or they might say they want to change it and they can do that. They have the power to change that law, and they could take away the whole education system. They have the power to do that, because there is no constitution standing over the top of them to stop them.

The Northern Territory government can only do what that federal act says it can do, and the Northern Territory people were not asked about that. No one has ever gone and asked the people how they want this Northern Territory to go, how they think we should work in the future, and how we are going to stop the fighting between yolgnu and balanda. How are we going to get people to work together? How are we going to build a future for our children and their grandchildren? What do we want this place to be like for them? How do we want it to go?

Now, how are you going to set that up? You do that by writing this law, and that becomes the people's law. The people say that we are going that way, we are going to fix up our problems down that road, and we are going to make sure these rights are protected, so no one can take them away from us. This law the government cannot change. The only way this law can ever get changed is if all the people vote to change it.

Do you remember that, last year, you were asked to vote in a referendum to change the federal constitution? There were 4 questions and you had to say 'yes' or 'no' 4 times. Do you remember that? That happened because the Canberra government wanted to change the Australian Constitution, but they had to go and ask the people. The people looked at it, and the people said, 'No, you cannot'. They voted 'no'. So the government could not change it. It is the same with this. When you make this law, the government cannot change it. They have to go and ask the people if they want to change it. If the people say, 'Leave it alone', the government has to leave it alone. That is what a constitution is, and it is your law.

I was down in the Centre with Wesley's friend, Brian Ede, who is one of the men on our committee. We were in the desert country talking with the people there, and he said: 'If you have a crazy dog that is biting people all the time and you do not want it to bite too many people, you put a rope around its neck and you tie it up to a tree. If you give it a bit of rope, it can run around as much as it likes inside that rope, but it cannot get outside the rope, because it is tied up. Well, this constitution is a bit like a rope around the government's neck. They can go around as far as you want them to go, but they can not go out past that rope. A constitution is the rope that says how far the government can go. And you make that law.

That is why we have come here today to talk to you about this job that we have to do. Today, I do not expect you to say: 'Oh, I think you should do this, or you should that'. This is too important a job for that. What we are saying is that all the Northern Territory people - everyone, yolgnu, Chinese people, the lot - have all got to start thinking about this. Have a look at the stuff that has been written and think for yourself about what is important for you. Where do you want this Northern Territory to go and how do you want this to work in the future? We want to encourage you to sit and talk amongst your community about this. Get your ideas together and, later

on, maybe at the end of this year or it may be early next year, we will come back when you are ready and you tell us then what you think should go in this law.

We are going all over the Northern Territory. We have been down to Kintore and Finke, and we have been over to VRD, to Borroloola and in the Barkly and around Arnhem Land. We are going to Port Keats, and up into the Tiwi country, and in Alice Springs and Darwin. We are going all over. We are visiting 59 or 60 communities and saying the same thing, because this is not a job for the politicians to do. This is your job. This is a job for the people to do.

This time we are going around to say: 'You have to start thinking about this, because this is how you can say how this Northern Territory is going to go in the future'. Don't let the governments do it. Don't let the politicians and the lawyers do it. This has to be what the people think and has to say where the people want to go. The people must make this law and put that law over the top of the government, and make the government go down that way. That is what a constitution does. And that is how you can make a good place for your grandchildren, and a good place for their grandchildren. Then, in 100 years time, they can look back and say: 'Those old people they did a good job for us. They made this Northern Territory a good place for us'. If we do not do this job, they are going to look back and say: 'These people left a mess behind because they were too lazy'. Now, what do you want? Do you want them to look back and say: 'Those old people they did a good job. They made this a good place. They made this law that makes the Northern Territory a good place for us', or do you want them to look back and say: 'They were lazy, hopeless people who would not work. They would not do this job. They left a mess for us to fix up'?

This job will have to be done one day, and we are saying we should start now, to find out how we can make this place go the right way. We are not going to do the job for you. We will come here and help you. If you are not sure what we are talking about, we will get someone to come out here, to sit down with you and talk to you about this or that or something else, and you can go away and think about that, work out what you want and how you want this to go. After that, you come back and you tell us what you think, and all the other people in the Territory will tell us what they think, and then we will do our first job. We will sit down and put down what we think the people are saying. But we are not going to do all the writing, because we have another job to do.

For our next job, we have to put together a special committee of representative people from all over the Northern Territory, people from the Centre and people from the Top End, Aboriginal people and people from the different towns, all the different types of people - women, the whole lot. They will be representatives, people who you think can speak properly for your community. We will get them together in a special committee which we call a constitutional convention. That is just a special committee whose job it is to look at what we have done, and see whether they think it is right or whether it should be changed again, and fixed up so that it says what the people are saying.

When they have worked and worked and argued and talked about it, and fought it through and got something that they all agree with, then that goes out to all of the people to look at and to vote on. If everyone has done a good job, the people will say that that is what they want, and they will vote 'yes'. Then we will have a constitution. If it is not quite right, you say: 'No, not yet', and

then they will have to go back and start working again, and they will keep working until they get this law the way the people want it. Then it will become the people's law.

That is going to take a long time. It is not going to happen quickly, but it is a job we have to do. That is why we are coming around now saying: here is your chance to start working to make this Northern Territory go the way you think it should go, so that everyone can start working together, side by side, and going down the same way. They can have respect for each other. We can each have our own culture, our own ways, but in a way that shows respect for the others too. Side by side we can build this place for everyone. It will take a lot of work, and it is not going to be easy but, if we do this job properly, we will make this Northern Territory a place that everyone will be happy to live in and proud of. It will be a place where everyone has a future. Only the people can do that. Governments cannot do that for you; you have to do that job for yourself.

We are here to help you in that process, but you have to do the job and take us down that road. That is why we are here to say: please, start thinking about this, and make sure that, in this job, you have your say. Take part in this so you have your say and the things that are important to you are properly looked after when we make this law so that, at the end of the day, when it is finished, you can say: 'Yes, that is my law. That is the people's law. And that is where the Northern Territory is going to go in the future'. That is what we are here for.

I will ask Wesley if he would like to say a couple of words.

Mr LANHUPUY: (Wangurri and Djambarrpuynu languages)

Just for the purpose of recording. Now I'm just going to talk to you in my Mother's language, otherwise my language is Wangurri, and you might not understand my language, so I'll talk to you in my Mother's language, which is Djambarrpuynu, so you can all understand because it is more understandable.

.....

Steve has already told you the reasons why we have come here today. We are bringing books and pamphlets on constitutional development along with us during our visits to communities right throughout the Northern Territory to both European and Aboriginal communities.

This is the first committee of Parliament on constitutional development, and we are all working together as one team, both Labor Party and Country Liberal Party. The CLP is Steve's party and the ALP is mine, and both parties support these books and pamphlets on developing a constitution for the Territory. We are heading towards statehood by going through this process called constitutional development. All of the other states throughout Australia, Victoria, New South Wales, South Australia, Western Australia, Tasmania and Queensland, have a constitution which is like their bible which gives people their rights and it is written in a book. But for us mob, the Northern Territory people, we have no constitution like other people in other states.

.....

Even today the Federal Government can easily take back the power from us if they wanted to, from our education system, our public service system, our transport and works or even our land rights.

.....

We have our land rights laws written down on white man's papers, but they are just papers which haven't gone through any constitution to become rooted or permanent. That's why we in the Northern Territory Parliament are thinking of having a meeting for both black and white together throughout the Northern Territory for a constitution.

.....

I've already told you that we will be visiting over sixty communities asking both black and white people, asking questions like this, " What do you think about a constitution? Do you want it or not? If you want it let us know, tell us your story. ?What do you want in it? What do you want for yourselves, your children and your children's children?" In the end the white man's paper will affect our children when we are gone. For our children's rights. Do we protect their rights or not? For example, their education system. Do we want bilingual education to be written in this white man's paper? Do we want to keep it strong or not? Do we want land rights to be written into this white man's law or not?

.....

The land rights we have today is presently in the hands of the Federal Government which is okay, but it is not permanent yet. It is not written in the constitution. There is nothing in it, nothing.

.....

So we are asking the Federal Government for our rights because at the moment the Territory Government are only servicing health, transport, community services, the public service and education. The Federal Government has control over mining, uranium mining, control of parks and land rights. let's ask them for these rights. The purpose of this committee is to visit the communities so we can tell you this story and for you to tell us your story. If you want us to come back and visit your some time next year, or at the end of the year, it's okay, we will come. It's up to you. We're not making you hurry, we're not forcing you. You look at this white man's paper and think about it, discuss it and give us your views. In this white man's paper there are many hard English words so we are going to break it up into a simple English version for you to understand.

Mr MUNYAL: (Djinang language)

These two people standing here have asked me what do these people (the committee) really mean by what they are saying? They need a clearer explanation

so they can understand. These people standing over there have misunderstood what has been said here today.

(not clear) ... Do not rush these people too much with this business, they don't want to be rushed. They want to find out from us what we think as well. The committee are suggesting that we should have our own state and have our own bosses for the Northern Territory Parliament. This state will be for all of the people in the Northern Territory, Aborigines, urban Aborigines, Chinese and other people living in the Territory.

This committee shouldn't rush our people with all of these issues that they are talking about. The issues that they are referring to are for our benefit, for all people but we need to understand what is being said, and it is for that reason that these people (the committee) have come here today.

They are waiting for us... (not clear) They are here because they want to deal with our Yolnu laws, our business.

Then these white people may decide to take it (what has been discussed) to the Legislative Assembly, but other people may ignore their decisions. It is for this reason that we should come together on this issue as one strong voice for all Aboriginal people. Then the laws will be there forever. What is decided on will be like a bible for our laws and it will remain there forever ... (not clear).

The committee and Wesley are saying that this constitution will be like a bible. The people in the Parliament are also talking about different things. They've got their own laws and they also will put suggestions into this constitution, but they will be different to ours.

These people who are here today want our ideas on these matters because they are concerned for the people of the Northern Territory and Yolnu people. They are talking about how they are going to communities, bringing the news of this constitution and talking to people first. They will then draft our ideas into a paper before a constitution is made. We must make up our mind. We must think properly and carefully before we make our decisions.

Yes, it's good that they've decided to put down these laws that they are talking about it, and when they make a decision they're going to make a decision for both Balanda and Yolnu, and that will also be our decision, our law and our story.

These people, the politicians in the Parliament, will make a strong law for us and then they won't be able to over ride it. It will stay there forever, for all of the people in the Territory .

Yes, the Federal Government will look at those laws and they won't be able to influence or change laws that are made for the constitution. It will be the people's decision as to what laws are made.

These people who have come today are here to help us. They will work for us and they will protect and fight for us... (not clear). But we must look at this law properly and in a good way.

I'm only expressing my ideas on what I think the committee has told us today. When Wesley was talking about these issues I understood him and accepted what he said as true. But other politicians come with many ideas and they are too fast in their thinking and ideas for us.

This committee was selected to help communities with these issues. They are telling people why they have come and what is important about these issues, and they are making sure that they are clearly understood by our people, because they are our people's concerns.

Mr WELUK:

Is what you are talking about already law? Are we talking only about statehood? May I ask the question, how can the NT manage with the numbers per head?

Mr HATTON: I think the question I was just asked is how can the Northern Territory manage to become a state with only a small population? Is that right?

Ms Junie THOMPSON: (inaudible) How can we be autonomous?

Mr HATTON: Well, how can we be that? I will pick up a couple of things. First of all, we have not all the powers that a state has now, and we do not have quite all the functions that a state has. Some things are different. But already we have a parliament that you vote for - Wesley and myself. We have the parliament. We have all the public servants, the teachers, the nurses, the doctors, the police and all the people working in what we call the government administration. That is all there. It is out here. You have teachers here, and schools are being built all through the Territory. We have got all the courts in the Northern Territory. So we have all of what we call the institutions, all the things that are there now. We have the parliament, the public service, the courts, and the taxes the same as the states have. The money we have coming in from the federal government, since last year, is exactly the same as it would be if we were a state. We are not getting any special money any more. That stopped last year. So we are not getting any special money at all for being a territory. We are being financed as if we are a state. All the things are in place, the only thing you have not got is constitutional rights. That is what you do not have.

Well, you have all the responsibilities. You are paying the taxes. You are electing governments. You have a public service to support. You have all those things in place, but you have not got the rights. We are already managing as if we were a state, but you do not have the same rights, because we are not a state, and what you have is not protected by a constitution. The federal government could take it all away tomorrow. They have the power. They can just take the whole thing away. What the government gives you, the government can take away.

Ms THOMPSON: So can a state.

Mr HATTON: A government can, unless you write it up in a constitution.

Ms THOMPSON: You can amend that constitution too.

Mr HATTON: Only the people can.

Ms THOMPSON: You can make by-laws.

Mr HATTON: No, you cannot. Not for a constitution.

A person: Yes, you can. A state legislation can.

Mr HATTON: By-laws to a constitution, Graham?

Mr NICHOLSON: I have never heard of it.

Mr HATTON: No. You cannot do it. I am not talking about a school constitution or a ...

Ms THOMPSON: I know what you are talking about.

Mr HATTON: All right. This constitution that is it. It is the law, it is there. There are no by-laws to a constitution. If the government tries to go outside that ...

Ms THOMPSON: Yes, but you can amend it by taking it to a referendum.

Mr HATTON: That is right, yes you can.

Ms THOMPSON: If you wish something to be changed, once the state constitution is made, it can be changed.

Mr HATTON: Only by the people.

Ms THOMPSON: Yes.

Mr HATTON: Yes, but it has to go to the people.

Ms THOMPSON: But, you did not tell the people that ...

Mr HATTON: Yes, I did.

Ms THOMPSON: ... an Australian state, the Australian Constitution can go above that.

Mr HATTON: The Australian Constitution is there now.

Ms THOMPSON: It is above the state too. You have to tell them that.

Mr HATTON: No, it is beside the state constitutions, actually.

Ms THOMPSON: No, it is above the states.

Mr HATTON: In some respects it is, yes.

Ms THOMPSON: It is above the states.

Mr HATTON: Okay. I will explain that fully.

There is 1 constitution for the federal government of Australia and that covers the whole of Australia. That constitution says that the federal government can do these things and a state government can do those things. It separates them out. Sometimes it says that both the federal and state governments can do certain things but, where both the federal government and a state government can both be in it, if the federal government makes a law on that subject, then that federal law stands over the top of the state law, but only in those areas. That is how they fit together.

When we write a constitution here, our constitution for the Northern Territory cannot go outside the constitution for the whole of Australia. For example, the most important part of that is that you cannot make the Northern Territory a republic. You have still to have the Queen as the head of state because the Queen is the head of Australia and that goes through to the states too. So, if you think we should be a republic, you do not do it for the Northern Territory. You have to do it for the whole of Australia. Those are the differences.

But, right now, you need to understand this. That federal Australian Constitution and the rights it protects, those rights belong to people who live in the states, because Australia is a federation of states. People in the Territory are outside that and, in layman's terms, section 122 of the federal constitution says that the federal government can do what it likes in the Northern Territory. There are no limitations. And I will say this on the federal constitution: they have the power to acquire property, without compensation. They cannot do that in the states because the Australian Constitution says they cannot, but they can do it in a territory.

I will say this too: there has been a lot of talk about land rights. The Land Rights Act is there. It is an act of the federal parliament. Now I do not believe any government is going to take it away, but they have the power to repeal that act of the federal parliament and, if they do, then land rights are gone, because it is not protected by the constitution. There is nothing to stop the federal government taking it away, except politics. It is a federal act of parliament.

I know Wesley was talking to you, and a lot of people have said: 'Well, how can you trust this Northern Territory government with things like that?' Well, if you cannot trust the government about something, you put it in there. That is to stop the government doing things you do not want it to do. It takes the power away from the government.

Mr WELUK: Steve, if we put it in here, will it exist for maybe 10 or 20 years, and be constant?

Mr HATTON: Yes, until such time as the people change it. Only the people can change that. You can write in there that only the Territory people can change that, and they have to vote, like you did last year on the federal one when people said: 'No, do not change it'. Not only that, when you look at some of this stuff, you will see what they call entrenchment. That is when the people have to vote. And you can have different levels of entrenchment. You can say that more than half of the people have to say 'yes' to change it. Or you can say that three-quarters of the people have to say 'yes' to change it, or 90% of the people have to say 'yes' to change it. Different parts of it can be made tighter inside by different levels of entrenchment.

Mr CRAWFORD: Who says how deep the level of entrenchment will be?

Mr HATTON: You do, when you write the constitution. You put that into it.

Ms RUSSELL: What if the Northern Territory government wants to develop mineral resources on Aboriginal lands and they think it is imperative for the good of the state's development? Can they override, say, the wishes of the Aboriginal people in these communities?

Mr HATTON: That is why I am saying that you have to determine whether you are going to give the government those sorts of powers. That is how the people write a constitution, to decide those sort of things.

Ms RUSSELL: What if the Aboriginal people are in the minority, and the majority of a state votes that maybe uranium could be exploited out on these communities, but the people do not want it?

Mr HATTON: Let us just take it a step at a time so we come back, because we are now moving beyond the constitution and beyond the next decision which could be statehood, and assuming it has transferred powers to the Northern Territory at statehood. There are 3 sets of steps you have taken to get to the question you are asking me.

The first thing you do is get a constitution in place, that all the people agree with. When that is made, to bring it into operation, we have to go to the federal government and say: 'This is what the people have voted for. Now, we want you to change the Self-Government Act and make that a Northern Territory Constitution Act. So then this will replace the Self-Government Act on how we are going to operate'. It will still be a federal act, but it will be there and in place, to put the constitution in place. When that is there and going, and everyone says, 'Yes, that is the way we want to go', then they say: 'Well, do you want to become a state?' Then the people talk about that and say that, yes, they want to become a state, and that might happen in 5 or 10 or 20 years time. Then they become a state, and this constitution is locked up for the Northern Territory people.

When they become a state, they discuss what powers are to come across. When all that has happened, say, all mining, including uranium mining and mining in Kakadu and all those areas will transfer to the Northern Territory. Apart from uranium, all mining is now under the control of the Northern Territory government.

When all that happens, if the Northern Territory government says it wants to mine uranium, do not forget there is still a federal government up there, and you cannot export anything out of this country without a federal government licence. So, even though we might get a mining tenement, if the federal government will not give them an export licence, they will not open a mine, because they will have no one to sell it to.

Ms RUSSELL: What if they do like the idea? What if the federal government says that is fine, go ahead?

Mr HATTON: Okay - and that goes ahead. The question you are asking is whether the individual landowner has the right to veto mining on his or her land.

Ms RUSSELL: Yes, that is right.

Mr HATTON: That is a question you have to deal with at the beginning, when you write a constitution. Because you can write those sort of things into there if you think they are important, and if all the Northern Territory community, as a group, come to that decision. And ask yourself the question: should any landowner, white or black, have that right of veto? That is another question you might want to ask. Or do you say that there should be no veto.

I am not going to say: 'You do this or you do that'. I am saying that that is your job. That is why this has to become the people's law.

Mr THACKER: Does the Australian Constitution have anything in it about human rights.

Mr HATTON: No, it does not.

Mr THACKER: Then, if we are putting a state constitution together, and plan on saying something about human rights, which you say here, and you have already said that, in the state constitution, we cannot go above the Australian Constitution ...

Mr HATTON: Go outside the Australian Constitution.

Mr THACKER: ... go outside ...

Mr HATTON: You cannot break it.

Mr THACKER: Yes. How can we implement this then?

Mr HATTON: Well, the Australian Constitution is silent on the issue of human rights.

Ms THOMPSON: It comes under common law, doesn't it.

Mr HATTON: That is right. It operates through the common law system, the courts and the judgments of the courts going back for centuries.

One of the arguments in the Northern Territory will be about whether we should have a kind of written Bill of Rights statement inside the constitution, and there will be arguments about that, for sure. But, if the people here say: 'Yes, you can write them in there', then they become binding in the Northern Territory, and they are binding on your Northern Territory government. We cannot put those rights in here and make them apply to the federal government. That is all. We can make them apply to the Northern Territory government, but not the federal government.

Ms THOMPSON: When you talk about human rights, you've never put the (inaudible) amendments in (inaudible)?

Mr HATTON: I am not putting anything in here. I am saying that you have the right to raise and debate that, and argue it out with other Territorians. Nothing is excluded from being argued about. I am not going to say: 'You are allowed to do this, and you are not allowed to do that'. I am saying to you that, if you think that it is important that certain things go in there, you put them up, and you argue them out with other people in the Territory. If you can convince them that

they should have it, then they will put it in there. All right? I am not going to do the job for you. I want you to start your minds working.

Mr LANHUPUY: I just want to clarify a point that was raised earlier in relation to the veto power that Aboriginal people have on our land. At the moment, the legislation gives us that power to veto or give consent to a mine for a period up to 5 years, on Aboriginal land specifically. After 5 years, a mining company who has an interest on that lease can come back again and ask a second time. If the people say 'No', then that veto exists for about another 5 years.

Ms RUSSELL: Is that federal ...?

Mr LANHUPUY: Yes. That is under federal legislation at the moment.

Mr HATTON: That is in the Land Rights Act.

Ms RUSSELL: Thank you. But it only lasts 5 years, then it is renewable?

Mr HATTON: Yes.

Ms RUSSELL: And, if this is not written in the constitution, anyone could step in and say: 'That is waived now. We can go in and mine there'. Could they do that?

Mr HATTON: If that is what the people of the Northern Territory argued through. It is a question of whether you write into the constitution a guarantee of the right of veto, or whether you leave the constitution silent on that question and argue it out in the context of legislation.

Ms RUSSELL: Well, would Aboriginal people be in the minority in the Northern Territory?

Mr HATTON: Yes, they are 22% of the Northern Territory.

Ms RUSSELL: So their decisions could be vetoed then? Could they?

Mr HATTON: No, it really is not that simple. This whole thing is not going to work - and I was saying this same thing in Alice Springs and Darwin - this whole thing is not going to work unless it works for everyone. You cannot just freeze out a quarter of the population.

If you do not believe that the Territory people are honourable enough not to do that, if you do not believe that, take heart from the fact that, down the road, to get this whole thing working, we have to go past the federal government, because they are still over the top of us. The federal government is not going to let something happen that will chop out a quarter of the population. They will make sure those people are looked after properly.

Ms RUSSELL: Do we have that guarantee?

Mr HATTON: It is a better guarantee than having no guarantees on anything in the future with the federal government. You see, you have no guaranteed rights now. There is nothing to lose through this. All this does is give you rights. It does not take them away from you. A constitution will give you rights. It limits government.

In Britain, they do not have a written constitution, and the government is all-powerful. There are no limits on what that government can do. They can pass any law on anything. In what we call a constitutional democracy, like Australia, the United States and Canada, where we have written constitutions, we limit the power of government through those constitutions. This is the way the people maintain the ultimate power in a democracy.

So, you have everything to gain in this, and nothing to lose. It is a question of how much you try to put in there to lock it up, and remembering when you make that law, that you know how hard it is to change a constitution. If people are not sure about a change, they will leave it alone. They will not touch it. It is very hard to change it. So you have to work very hard to get that right for the future, because it is going to set the direction for generations to come. That is why we are going out of our way to say: 'Get involved. Have your say. Speak up'. Don't leave it to somebody else, don't walk away from that job. It is too important for you to do that.

Ms THOMPSON: In the states - South Australia and the Northern Territory are the only ones for that have land rights, aren't they?

Mr HATTON: No.

Ms THOMPSON: Yes.

Mr HATTON: A Land Rights Act as such, yes.

Ms THOMPSON: Unless the Australian government interferes ...

Mr HATTON: You said once that Victoria does.

Ms THOMPSON: Victoria has got a land rights act. New South Wales is thinking about incorporating it.

Now, in South Australia, they get title. In the Northern Territory, at present, they do not get the title to the land. They have land rights, but they do not get the title.

Mr HATTON: The owners?

Ms THOMPSON: They are in trust.

Mr LANHUPUY: It goes to a land trust.

Ms THOMPSON: But in South Australia, they own that land. Now, is it going to be different for the Northern Territory people?

Mr HATTON: Well, all I can say is that, in the Northern Territory, firstly ...

Ms THOMPSON: In Queensland they have no rights at all. There, they come in and move houses and everything. And they have a constitution.

Mr HATTON: Yes, that is right.

Ms THOMPSON: Western Australia will not even look at land rights now.

Mr HATTON: Yes. Well, I cannot answer this question, and I will tell you why. The first thing that it is important to know is that everybody in the parliament, the CLP, the Labor Party, and I think even the National Party, are all saying there is a guarantee of a continuation of land rights. We are saying that if you do not trust the government about that, then you have a way of protecting yourself through a constitutional provision, through constitutional rights. That is to have land rights.

As to what sort of land rights you have, how the title to the land is to be held, what can be done with the land, who has the decision-making rights, the roles of the land councils, and how the thing operates - and I am talking from the government side now - we have always said that we will not say that it is going to go this way or that way. We have said that we want to sit down with the Aboriginal people, the owners, and ask how they want it to work. All the time it has always been people saying: 'We are telling you that you are going to do it this way. We are telling you to do it that way'. We are saying that what we should do on something like land rights is sit down and talk about all the problems. We should work it out and the Aboriginal people should say how they think it should work.

Do you think the Land Rights Act is perfect now, that there are no changes that could make it better? I don't know. Perhaps you do. Some people think that some things could be changed in it. What we are saying is that, as Northern Territory people, we should sit down together and talk about it, and sort out what is the best way to do it. You do not want me to tell you it has to be done this way, or it has to be that way.

Ms THOMPSON: No, but you need to guarantee to the Aboriginal people that they are going to have land rights incorporated into the constitution.

Mr HATTON: I will give you a guarantee now. The only thing that the government has ever written on land rights in this exercise is a book, and we will send copies of this book to you. Yes, can you bring them out, or I will post them out.

Mr FARLEY: Send them through OLG.

Mr HATTON: I will get the OLG people to bring some copies out. It is called 'Land Options on Statehood'. The one thing it says is that, on statehood, there is a guarantee that land rights will continue. It talks about the different ways in which we can make sure it continues, and how you can get something like an insurance policy against the government - and the top insurance policy is a constitution. So, there is guarantee of that.

Ms THOMPSON: Are you going to have a select committee also on constitution rights there in the constitution?

Mr HATTON: On the constitution? Yes, we are members.

Ms THOMPSON: When you have that select committee, the majority of Aboriginal people will be sitting there to look at protection for Aboriginal rights. Now, a lot of these people do not understand everything that is going on. Are you going to have someone there translating for them and providing legal clarification on a lot of things?

Mr HATTON: That is why we have been going really out of our way. We have been talking about how we can get information out in language, on videos, on tapes, educational materials.

Mr WELUK: Employ more people from each local community that know the languages.

Ms THOMPSON: But, I mean, on the select committee?

Mr HATTON: On the select committee? Yes, well remember that this select committee is only part of the job. Our select committee will be sending stuff out to people. There are only 6 of us, and we are like the first step going down a long long road.

Ms THOMPSON: How many Aboriginal people have you got on this select committee?

Mr HATTON: One - one out of 6, at the moment, and that is Wesley. We are all members of the Legislative Assembly. We are all politicians, if you like.

Ms THOMPSON: I know that!

Mr HATTON: Yes, right!

What I am saying is that the real job will be done when we pick that constitutional convention, and one thing we are asking is how we will go about setting that up. You tell us that. What sort of Aboriginal representation should there be on that constitutional convention? What sort of things should they be doing to make sure that the communities' views are going through to that convention?. You tell us that. Think about it yourselves and, when we come back, you tell us. Because, if we sat down by ourselves to work out what goes in that constitutional convention, I bet you somebody would say: 'Oh, they just rigged it.' Wouldn't they? So, we are not going to do that. We are going to ask you for your views.

When we come back, we will want submissions. They can be in writing or they can be verbal. Just talk and tell us what you think anyway. They can come from a group, or they can come from individuals. If different people have different ideas, we want them to come forward individually and to get involved. We want people to have their say.

Wes, do you want to add to that?

Mr BANBUMA:

We want to get information from you. This is just finding (not clear). Is there no constitution or law, yet?

Mr LANHUPUY:

Yes, nothing yet.

Mr BANBUMA: That's coming

That's coming to us. We will think about this information so we can learn from it.

Mr LANHUPUY:

Yes.

Mr BANBUMA:

I'm thinking this just for myself, myself. I do not know enough about this or that. I don't know enough, yet.

Mr LANHUPUY:

Yes, for that reason we will come again to give you more information, and I'll come back to see you again.

Mr BANBUMA:

Not yet. When we are ready we would like to know more about your policy and then we will go through it step by step. That's what I see. If I go too far or too fast ... (not clear). What will you do then? (not clear) If we give you mob the authority, if we give you the power for this one. What will you do with it? We need to do our thinking before you mob take on the power.

Mr LANHUPUY:

What do you want? If you want us to put your power into this paper you need to let us know.

Mr BANBUMA:

Will you accept it?

Mr LANHUPUY:

Yes, we will accept it and put it into the constitution. You must talk about this again.

Mr BANBUMA:

You mob, don't take the power away from us.

Mr LANHUPUY:

No, we can't. This power will over ride us because this power is beyond us. It's bigger.

Mr BANBUMA:

Like Yolnu thinking, right? Like Yolnu and Balanda?

Mr LANHUPUY: Northern Territory.

Mr BANBUMA: Northern Territory people.

Don't give us your ideas. Don't tell us how to think, but you listen to Yolnu people, Northern Territory people.

Mr LANHUPUY:

Our (the committee's) ideas are in this paper. They're our ideas and then we present them to you.

Mr BANBUMA:

Whose paper is this? Who did the planning? Whose programme is this?

Mr LANHUPUY:

(not clear)

Mr BANBUMA:

Why don't we have a constitution? Why don't we have power in the Northern Territory for Chinese, Indians, Indonesians, halfcastes and Balanda, our power. If Federal people or government people come (not clear) they can come anytime they want.

Mr LANHUPUY:

(not clear)

Mr MILAYNGA:

One question for you about the constitution. What is very important is the changes that will be made in the NT when statehood happens. What I'm trying to say is, that I was thinking about the old people. I'll talk on their behalf. You said that the Northern Territory has no power. Is that right? And if we change the NT into a state then what will happen? Will we then have power? For example, if white people come and say, "Hey we want to do some exploration work on your sacred sites." Will we have the power to say, "No". Is this true or not? What will happen in the future, talking about this statehood.

Mr LANHUPUY:

Last time a lady asked me the same question. And I said to her, if you don't trust the Labor Party or Liberal Party then say, "I don't trust them." They might later change and take away my land rights. It sounds that you might have this question in mind. Okay. If you express what you are saying and put it down in the constitution that constitution is then more powerful than the Parliament. Part of

what will be written into the constitution will be your concern over land rights. It is your right to put land rights into the constitution, and it will be a first in the history of Australia as all of the other states don't have it.

If we Yolnu people fight for our land rights to be written into the constitution then it will be a first. The power in the constitution will overcome the Parliament, and it will protect our freedom, religion, and other things to do with power.

Mr MILAYA:

The constitution can do that?

Mr LANHUPUY:

Yes.

Mr MILANYA:

The other thing was back in 1970, 1901? Is that right?

Mr LANHUPUY:

In 1901.

Mr MILAYNA:

First Victoria, Queensland and Western Australia became states. Is that right? Maybe what I'm saying is what the old men are thinking because when those other places became states their system changed.

Mr LANHUPUY:

Yes.

Mr MILAYNA:

You see? It doesn't matter if I talk straight? Then they started to build big cities, and so there are big cities now. This is just maybe what they (the old men) think.

Mr LANHUPUY:

And this is the reason, the paper is here. It's one of the reasons why we are giving you the paper and saying, "Here's the paper, think about it and discuss it amongst yourselves about what you think. Would you like the Northern Territory to develop like the other states or do you want the NT to develop in different ways?

Mr MILANYA: I see.

Mr LANHUPUY: - That's why

That's why this paper ...

Mr MILAYNA:

... Yes, yes alright, yes.

Mr LANHUPUY:

The style of life or how we Territorians should live ...

Unknown :

It's just that I saw in the paper made in 1901 those who gained statehood (referring to other states) ...

Mr LANHUPUY:

They were the last to get it, yes.

Mr MILAYNA:

Those towns became bigger after statehood. What happens if we change and our towns became bigger? Is it the right way? I'm just thinking. Will we find a good way for Yolnu people? What changes will statehood bring? Will it change our law? Will you follow our way or will you follow their way?

Mr LANHUPUY:

We will follow your way, for those who vote for us.

Mr MILAYNA:

Yes, that was my question.

Mr MUNYAL:

That is, will we become more powerful (mori)?

Mr LANHUPUY:

From this time on (after constitution) no one will fool around with our land when the law changes to statehood. What we are trying to do is to put our laws into this constitution permanently. Our land rights have to be written down on this paper, the constitution, to be strong and more powerful.

Mr MILAYNA:

Shall we still have that power? This is the same question that I have asked before, about the exploration.

Mr LANHUPUY:

If (after land rights are written into the constitution) will we still have that power?

Mr MILAYNA:

Hold onto that same power.

Mr LANHUPUY:

Yes, only if the Parliament doesn't change any laws.

Mr MILAYNA: thank-you.

Yes, thank you.

Mr MILAYNA:

That's alright.

Mr WELUK:

They are giving people the opportunity all over the NT to decide on this one. What group was that you mentioned where we can send in people?

Mr LANHUPUY:

The constitutional convention. If say Raminigining, Milingimbi and Galiwinku want they can send our mob into this convention.

Mr LANHUPUY: As long as, in the end, we hope that we will find a way so that one of these days a constitution will be made up for the Territory by the people of the Northern Territory - not by us politicians. That is what we want. The reason why we are going around so many communities is to ensure that a lot of people listen, hear about it and express their views. Whether it is about anything to do with land rights, fishing, whatever. Let us do it now so that our children and our children's children can live under legislation which we have framed and which might be good for people in the Territory. (language)

Ms THOMPSON: Well, on land rights, the only state that has embedded in its constitution things on land rights is South Australia.

Mr HATTON: It is not in the constitution though.

Ms THOMPSON: Yes, that is correct.

Mr NICHOLSON: It is just in legislation.

Mr HATTON: That is just in legislation. It is not in the constitution.

Mr LANHUPUY: I think it is just in legislation.

Ms THOMPSON: It is embedded into the constitution.

Mr HATTON: No. Well, my lawyer says it is not.

Ms THOMPSON: It is embedded into the constitution.

Mr LANHUPUY: Pitjantjatjara Land Rights Act.

Mr HATTON: The Pitjantjatjara Land Rights Act, but that is not a constitution.

Mr LANHUPUY: It is just an act like we are under.

Ms THOMPSON: (inaudible) in the state constitution of South Australia. When Dunstan (inaudible).

Mr LANHUPUY: State legislation.

Mr HATTON: State legislation, not the state constitution.

Ms THOMPSON: It is the state constitution, because I was looking through the archives in the Tasmanian university.

Mr HATTON: Graham, do you want to go and double check that?

Mr NICHOLSON: I can look it up but I know the answer.

Mr HATTON: He says he can look it up but he knows the answer. It is in the act and not in the constitution.

Mr LANHUPUY: It is just like we are, I think. The South Australian Pitjantjatjara Land Rights Act is the same as we have. It is under a federal act of parliament.

Mr NICHOLSON: No, it is a state act.

Mr HATTON: It is a state act.

Mr LANHUPUY: A state act. We are under a federal act of parliament, us mob. Us mob - the Territory government, cannot make any laws that are above the Aboriginal Land Rights Act.

Mr HATTON: We cannot even make (inaudible).

Mr LANHUPUY: I am referring to the Territory Land Rights Act. We cannot make laws that are above the Aboriginal Land Rights Act 1976, but we can make laws that will work with it.

That is one of the main reasons why I am going around saying to our people that they need to ensure that they talk about this. Our people are about one quarter of the Territory's population. If we do not like it, the federal legislators have a right to protect our interests. They will say to us mob in the Territory: 'Oh, you have not consulted. Go back and do some work'. That is why we want a lot of people to have as much input as they can on this one.

Mr HATTON: Can I say another thing? This job is not going to be easy. This job will not be nice and smooth, with everybody being nice and friendly and happy to go along. Now you know that many of the things we are talking about now other people think very differently about, don't they?. And when the representatives of all the groups get together, there will be lots of arguments. We have to understand that, but what are we going to do if we really want to make this place for the future? We will have to work through those arguments and talk them out, and talk them out, and it is important that you make other people understand why those things that are important to you are so important for you.

That is why we are getting you all in the one place, in that constitutional convention. You will have to talk to each other across the table about these things, and explain why these things are important to you, so that other people can understand. And they will explain to you what is important to them, so you understand what they are thinking about. Then, bit by bit by bit, we can start turning and going together. And just that way of doing it will work to bring this Territory together. It is not just the end result that is important; the process will be just as important to make this Northern Territory go the way we want it to go. We need to start to talk out the differences in the Northern Territory.

Ms THOMPSON: Have all yolgnu people sat down and talked about this? You know, yolgnu (inaudible)?

Mr LANHUPUY: What we have done over the last - what, 2 or 3 months?

Mr HATTON: Since March.

Mr LANHUPUY: Since March, is go around to the major communities, Alice, Darwin, Katherine, Nhulunbuy ...

Ms THOMPSON: Yes, I know about that, but have they sat down (inaudible) and talked about it?

Mr HATTON: Saying what we are saying here.

Mr LANHUPUY: ... all those communities there, just visiting. This is the first phase of our visit. Any individual, any group, any community that wants us back, we will certainly come back to. We have had meetings at - where, Bagot?

Mr HATTON: Bagot.

Ms THOMPSON: But they have not really had a good (inaudible)?

Mr LANHUPUY: No, because it is just the first part of the process. We know it is going to be a long drawn out one. We have not got a time limit on it, although we have a time placed upon ourselves as to when to report to the Assembly. But, as far as when the constitution is to be finalised, that is anyone's guess.

Ms THOMPSON: Now that you have got this thing out, the proposal for a new state constitution, (inaudible) an idea - 5 years? 10 years? When are you looking at?

Mr HATTON: I think, if this went smoothly, it would take us 3 to 5 years - just to write a constitution. If it goes reasonably smoothly, it will take that sort of time frame. It could take longer

because, if people have not sorted it out, then they will have to keep talking until they do sort it out. Let us say 3 to 5 years to get this written.

Ms McFARLANE: Can I just jump ...?

Mr HATTON: After that, you then say: 'Now, let us start talking about when we want to become a state - and if we want to become a state'.

Ms McFARLANE: Part of that process, once we reach the end, and we have got this (inaudible) we have this constitution that the whole of the Territory is happy with, you are saying that then it needs to be accepted by the federal parliament?.

Mr HATTON: Yes. Understand that we are sailing into uncharted waters. This has never been done before in Australia ...

Ms McFARLANE: Neither has the homeland centre RATE program.

Mr HATTON: No, okay.

We are dealing with sections of the Australian Constitution that have never been used before. Probably, we will be in and out of the High Court 20 times sorting out what the Australian Constitution says. We are all trying to feel the way as to how we are going to go about this. I believe that the sort of thing that will happen is that, when this constitution has been made, we would approach the federal government and ask them to introduce a Northern Territory Constitution Act to replace the Self-Government Act, so that that becomes the model for self-government. It becomes our constitution in existence.

Then we start talking about the process of becoming constitutionally a state, and the transfer of powers issues, political representation, and all those other issues. And, before we do that, we have said that we will go and ask the Northern Territory people, so there will be a referendum from Territorians to determine whether they want to go to a state.

Ms McFARLANE: My concern is that we have done this work and written in the (language) the constitution, it has something about land rights and uranium mining. If the federal parliament agrees with land rights, but does not agree on uranium mining, what happens then? Does that federal government try to bully people of the Territory into agreement?

Mr HATTON: You have got 2 things. Firstly, if uranium mining is a state responsibility, then they must fall within these rules. That is, if it becomes a non-transferred power on statehood, then they become moribund clauses of the constitution, because we do not have the power over that particular aspect of our life. But ...

Ms THOMPSON: Over uranium, platinum, and what else we do not have the power over?

Mr LANHUPUY: (inaudible).

Mr HATTON: At the moment we do not have power over uranium.

Ms THOMPSON: And platinum?

Mr HATTON: No, we do not have power over mines in Kakadu. It does not matter what sort of mineral it is.

Ms THOMPSON: The federal constitution has that power.

Mr HATTON: No, the federal government has that power, because they excluded that from us under the Self-Government Act.

Ms THOMPSON: But that is excluded from all states.

Mr HATTON: No, it is not. Uranium mining in South Australia is under the South Australian government, and the royalties are paid to the South Australian government. Here, the royalties are paid to the federal government.

Ms THOMPSON: And you get a percentage. The Territory government gets a percentage don't they?

Mr HATTON: No, no we do not. They collect the money, then they go through the back door and give part of it back to us. We spend, I think, every cent of that money on research and environmental monitoring. The Northern Territory government makes no money out of uranium. Whatever we get by way of special grants from the Commonwealth to replace the royalties, we spend on research and monitoring of the industry. Uranium is not supporting the Northern Territory government at all. It is supporting the federal government, just as a matter of interest.

Ms THOMPSON: But it would if it were a state.

Mr HATTON: If, on statehood, ownership of those minerals came to the Northern Territory, then those royalties would be paid under our act to us and that would increase our revenue-raising power and that would be offset in the Grants Commission structure. The total amount of money available to us would be the same. It is just like moving the cargo on a ship.

Ms McFARLANE: Unless the cargo stays in the ground. Because, that is what people want.

Mr HATTON: Well, that is what some people want. If it stays in the ground, maybe the consequence over the years is that there is a lower standard of living in the Northern Territory, because, you do not have that revenue available to run things like RATE programs.

Ms McFARLANE: Touche!

Laughter.

Mr LANHUPUY: The little bend has a twist!

A person: (speaking Aboriginal language). I think we might have to ask this politician mob to come back again to us.

Mr LANHUPUY: (speaking Aboriginal language).

A person: Don't come during the pay weeks.

Ms THOMPSON: You come on an off week.

Mr HATTON: All we wanted to do this time was to say what we are doing to start people thinking about it. Next time we will work out a time. You say: 'Look, can you come this time when we can spend a good amount of time, a day or 2 days, to really talk it through'. A time when you can go away and have a think about it and come back.

Ms THOMPSON: Monday and Tuesday, or Wednesday is fine.

Ms McFARLANE: Tuesdays are good days. They are quiet days.

Mr HATTON: So long as it does not happen to be a week when everybody is going off on a ceremony somewhere.

Ms McFARLANE: No. Tuesdays are quiet days in this community.

Mr HATTON: Every week?

Ms McFARLANE: Every Tuesday. Thursdays are always a busy day in the community, and Fridays.

Mr Jim MULHERN: If this constitution goes through the way you expect it to, does it mean we will get Sheffield Shield cricket soon?

Mr HATTON: Only when we have enough good cricketers, and I hope that is soon, because my kids would love to have a crack at it. Can I write that into the constitution - that my kids are allowed to play in Sheffield Shield cricket too?

Mr THACKER: Thank you, Steve Hatton, Wes Lanhupuy, Rick (own language)

Meeting closed.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

MILINGIMBI — Thursday, 4 May 1989

PRESENT:—

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Kenny DJAWULMA
Ms daisy BAKER
Mr DJUPANDAWUY
Mr Henry DJERRINGAL
Mr Joe PETERS
Mr Frank FARLEY

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording, or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 27 February 1991

Mr HATTON: Thank you for gathering together to give us a chance to speak with you today. If I may introduce myself, my name is Steve Hatton. I am the chairman of a committee of the Northern Territory parliament. I have with me someone you know really well, Wesley Lanhupuy. He is also a member of our committee. In the book we have just circulated around, if you look at the back page, you will see there the pictures of the members of the committee. There are 6 members of our committee and it is different to all the other committees of the parliament, because this one has 3 people from the government, from the CLP side, and 3 people from the Labor Party side. The same number from each - 3 and 3. This is the only committee this parliament has ever had where the numbers are equal. That is because, on the subject we are talking about today, the Labor Party and the CLP people in the parliament are all working together. We are not fighting on this one. We are all working together and trying to fix this up rather than having big arguments all the time.

What we are doing is going around to start work on writing a special law for the Northern Territory, or to help the people to start to write a special law for the Northern Territory. It is called a constitution. It is a new thing. We are not coming today to ask you to tell us what you think should go into this. We have come to explain what we are doing and to ask you to start to think about this, to talk about it in your community and to get some ideas together on what you think should go into this law. We will come back later this year or maybe early next year, and you will then be able to tell us what you think should go into this law. So today we are here to tell you what we are doing, not to ask you to tell us what you think we need to change. We are here to ask you to help us and to help yourselves in making this law.

A constitution is a different law to the sort of normal stuff you hear about. You know that governments come in and they make laws and the laws are going that way, and then they change the government and suddenly the law is going back this way again. It keeps changing backwards and forwards. That confuses a lot of people. Particularly I know that Aboriginal people say: 'Why can't the white people make up their minds where they want the law to go?' Aboriginal people have their law and their law has been there for thousands of years, and it keeps going the same way all the time. It does not change. It tells people how they have to live and what is important in how they should live and how they mix with each other. Your law gives the people their rights and everything and it puts it all together and it is always the same. It is where your life is built.

In the white man's laws we have one special sort of law, called a constitution, which is like that. It is a law that is not made by the government. It is a law that is made by the people. The people write this law and they put this law so it is the boss over the top of the government. It tells the government what the government can do and it tells the government what it cannot do. It says: 'Okay, this is the way we are going to go. This is how you are going to work with each other, how you are going to live together'. It includes your really important rights, the rights that you want to protect, rights that you say are so important that you do not want any government to muck around with them. You say that you are going to make them safe and put them in this special people's law. You put that there and you say: 'That is the way this Northern Territory is going to go'.

That is when the people say that, and the government has to work under that. It cannot go outside that law and the government cannot change that law because that law is made by the people. The only way that law can be changed is if all the people say they want to change it. It

keeps going the same way all the time unless all the people say: 'Oh, we will make a little bit of a change, but only a little bit', whatever.

Do you remember that, last year, you had to vote in what they call a referendum to amend the Australian Constitution? They had to ask you. You had to vote 'yes' or you had to vote 'no' on 4 questions. Do you remember that? Well, that is the same sort of thing. That is the constitution that sits over the top of the government in Canberra. That is the law that tells them what they can do and it tells them what they cannot do. Last year, the Canberra government wanted to change that law, but they had to go and ask the people, didn't they? And the people said: No, we do not want to change that law.' So the government could not change it. It is the people's law.

That is what a constitution is and all the governments in Australia, all of them - in Canberra, New South Wales, Victoria, Western Australia, Queensland, South Australia and Tasmania - they each have a constitution over the top of them. Only the Northern Territory does not have this law.

We do not have that law. No one has ever gone to the people and said: 'You tell us how you want this Northern Territory to work. You write the law'. They have never done that before and, because we have not got this law for the Northern Territory, what happens is that the government in Canberra can do whatever it likes in the Northern Territory. There are no limits, no rules over the top of them. They can do good things or they can do bad things. You cannot stop them, because they have got the power because you have not written that law. Even just having any sort of government in the Northern Territory can be affected. I am not saying they will do it and I do not believe they will. I am sure they won't, but that Canberra government has the power, just by repealing an act of parliament, to wipe out all forms of government in the Northern Territory. That can be done quite simply by repealing the Self-Government Act. There would be no government here and you would have no right to vote for a government in the Northern Territory, no matter which side you vote for. They could wipe it out. You have no guarantee of even having a government.

By amending a regulation under a federal act of parliament, they could wipe out the entire Northern Territory education system, by removing the power for us to provide education. They have that power because we do not have a constitution here, and that constitution in Canberra does not give us protection either. The federal government can do what it likes, because we are a territory.

We are coming here to ask: 'How do you want this Northern Territory to work. The parliament in Darwin, how should that be made up? How should the courts work?' There are a lot of hard questions there, and that is why I do not want you to tell me now what you think. I have some stuff here for you to look at and read and talk about. If you want it, someone can come back here and talk about bits and pieces with you so that you have a chance to think about it and talk about it as a community and, when you have got your ideas together, then you come and tell us what you are thinking. That is why, as we say, maybe at the end of this year or maybe early next year, we will come back and we will say: 'Now, what do you reckon should go in here?'

So we are saying now that it is really important. I am trying to say: this is a most important law. This is a law that you put down and it will make the Northern Territory go the way the people want it to go down the road together.

If we do that job well, we can work out for example how yolgnu and balanda can go side by side down the road together and stop this fighting. We can work out how to do that by talking to each other and making a law that says how we want to go together. And you say there your rights that are really important. You might say that you have to have a right to vote. No one can take away that right to vote in elections. So you put that in there so that no government can touch it.

Or you might say: 'I don't want any government mucking around with sacred sites. So I am going to put in there that the sacred sites have to be protected.' Right? You can do that. That is when the people make the law. Then you have to go and talk to the balanda and explain to them why those things are important, so that they understand. That is how we all come together and, when people understand each other, we can make that road.

It is not going to happen quickly. It will take a lot of work. We are just starting down the road now, and I am saying I want you to start thinking about it. As I said, we will come back later this year or early next year and you will give us some ideas, but that is only the beginning, because we are going all over the Northern Territory to communities all over the place. We have been to Kintore and Finke, over in the VRD and all over the place, and in Darwin and Alice Springs and we have been saying the same thing. They will have their ideas, and you will have your ideas. So you have all to start telling each other what you are thinking so that you can think about what the others are saying. You may agree with another person or you may not, or he may have thought of something you did not but that you think is a good idea. Or, to start, you may say: 'I do not like that' and then, when you start thinking about it, realise it is a good idea.

We have to start to put some of that together, but don't trust us to write this one. Don't let the politicians write this law. I ask you, don't let us do that. The people must write this one. What we are going to do is just get the ideas together and what people are saying and then we want to put together a big committee, called a constitutional convention. That is like a big committee of representatives of people from all over the Northern Territory. They must be people that can speak for you, people that you trust to speak for you and who you trust to go to this meeting as your representatives. We want to bring them all together and they will look at the work we do and they will say: 'Yes, we think that is right' or 'We don't like this. We think it should be that way'. Then they will talk about it and they will change it around and try to get it to say what they think the people are thinking.

When they have done that job, and they say: 'Right, that is what we reckon this constitution will be like', then it goes out and all the people have to vote in a referendum. If the representatives have done their job properly and the people say: 'Yes, that is good' and the people vote 'yes', then you have got your constitution. But if you look at it and say: 'No, it is not quite right yet. There are a few things I am not happy with yet' then you vote 'no'. Then they will go back and work on it again and they have to keep working at it until they get it right.

This law, when you make it, will be much like Aboriginal law. It is going to be there and it is going to keep going, so you have to make sure you have got it right for the future. It is a law that will help you a bit, but mainly it will help your children and your children's grandchildren, and people in 100 years time. This law is going to work for them. So you have got to do the job properly. It really is important when making a law like that, that you have your say and you make sure you do not get forgotten, and that the things that are important to you are written in that law. That is why

we have come around now to say that you have to start working on this one. It is too important. You cannot walk away from it. If you walk away, someone else is going to do the job and, in 5 years time, you will say: 'What is going on? You forgot about this and that', and that is not going to work, is it? You have to make sure what you want and what you need - what is important for you - is there in that law. That is what we are working here for. We have come here to say we are going to start doing that.

We did not just come to say that it is all open. We have been doing a bit of work. That book we gave you will give you some ideas, just some ideas. But that book is only a beginning. We have also got this one, this big one. We will leave some here. That big one has a whole lot of ideas. We have spent about 3 years working on this one. We looked at constitutions all over the world - in America, Canada, Africa, the West Indies and all round Australia. We looked all over the place, at different ideas and we saw some different ways that they have done. We have put them in here. There are some things in here I do not like, and there will be some things in here you do not like. There are other things in here you might like, and there are things in here I like, but they are all in there, all that we could think of. There might be some things that we have not thought about that you think about, and that is why we have come around now so you can start reading and thinking and you can tell us that, and put them out. You tell other people and everyone will start talking about it.

That will give you some more ideas to start talking about. That book asks a lot of questions, just one question after another and that goes for 11 pages. We wrote out all the questions that are in that book - just the questions - and that makes it a bit easier because there is just one question, one little thing at a time to look at. You work that one out and then go to the next question and talk about that one and, bit by bit by bit by bit you work through the whole thing. So it is not frightening. It is easier to work through that way. Then, if you say: 'I do not understand all the words in this. It is too complicated and I do not know what that means', please give us a ring and we will get Wesley or myself or someone else, maybe this man here, Mr Nicholson who is our lawyer, to come out here and talk to you about that so you can ask what it means. Then you can go away and think about it.

We are here to help you to start thinking about it so you can come up with your ideas and you can make sure you know what is going in here and that, at the end of the day, you are happy with what is going in there, and you are putting your ideas into this law. That way this law will become the people's law and that will set the future for our grandchildren - all of our grandchildren. That is the way we can work out how we are going to make this Northern Territory go the way the people want it to go. All the people - together. Maybe it will help us to sort out how to get around all this nonsense and fighting that is going on and make a good place for our grandchildren, if we do this job properly.

If we say: 'That is too hard. We are not going to do it', and we put it aside we will leave it with all the problems and your grandchildren are going to look back and say: 'Why didn't those old people do that job for us? Why did they leave their mess behind?' If you do this job properly, your grandchildren will say: 'Those old people did a good job for us. They made this Northern Territory a good place for us to live and they met their responsibilities well for us'. So, it is not just an opportunity, it is a duty, an obligation you have to your grandchildren and to your great grandchildren. I have the same obligation to my grandchildren and my great grandchildren. We

have to make this place somewhere for them. We want to make it the sort of place we want it to be for them - how we want this place to go so they will be properly looked after in the future, and we have to make this law as a start to it.

That is what we are here for, to tell you about what we are doing and to say: please start thinking about this one and start talking about it amongst yourselves. Get your ideas together and be part of this. Help us to do this job for the future for the Northern Territory, for the future for your community.

Thank you. Wesley, would you like to say a few words.

Mr LANHUPUY:

I will have to use two different languages, right? Steve has already told you earlier today that this committee is from the Legislative Assembly - the Northern Territory Parliament. There are six people on this committee - three from the Labor Party and three from the Country Liberal Party. He himself is member of the Country Liberal Party and I am in the Labor Party. That makes six of us on this committee.

We are going around visiting over fifty-nine communities here in the Northern Territory. The reason for this is the constitution - the law. Maybe later on, one of these days we will be living under this paper - this law. That's why it's important for us to go around explaining to you people about this constitution and ask you mob what you think about it. You can write to us and tell us and if you want us to explain to you again, we'll come back and talk to you to sort things out. If you find it too hard to understand, we'll discuss it in more detail.

In this paper there are a lot of matters that are important. For example, the parliamentary system and who we will elect to our Parliament? How will the legal system work here in Northern Territory? Let's put our ideas in this paper (draft constitution). There are other issues like do we want our land rights to become permanent? Do we want bilingualism? Let's do it. This constitution will make all of these things strong. At the moment our Land Rights Act is clinging onto an act of parliament and it's easy for the parliamentarians to throw our Land Rights Act away if they want. Let's put land rights into a (constitutional) law so it will become permanent and overcome the power which the Parliament currently has. It's important for us Yolgnu people to start talking about this paper because later, in the future, it will also help our children and our children's children.

Let's all have a look at this, especially at the land rights side. I've mentioned land rights because its important on our side, the Yolgnu side. At the moment Canberra has got the power. Canberra is looking after us. And one of the reasons why these two parties are supporting this constitution idea is that we feel it's been too long that Canberra has been giving us the orders, jobs, laws, an education system and running other areas. Lets ask Canberra for the power to do these jobs ourselves in the Northern Territory.

This law is like, for example, if I get bored staying in Galiwinku or Milingimbi, I go away to my outstation and work for myself and make decisions on my own - on the ground decisions. That's what we're all heading for. One of these days we hope we will see this happen and achieve it, then we'll be under the power of this paper.

Constitutional development is the process, that we (the committee) are working on now - developing a law on how we are going to live and work and exercise our rights here in Australia. Every other state has got their constitution. But us, the Northern Territory people, don't have it. At the moment we don't have Statehood - we're working under the Self Government Act at this time and we don't have a constitution. That's why the Northern Territory Parliament are saying, "Let's look at this paper". In the end the power will be in the community for the people. The Parliament won't have it again, not even for us, those people you mob vote for every three or four years. This constitutional power will overcome the Parliament's power.

Steve has already told you that if they want to change this law then the whole of the Northern Territory will have to vote to change it. We can't do it - we can't change it. With this constitution our laws will be put into a paper, and we won't be able to play around with it. Only the Yolgnu and Balanda living in the Northern Territory will be able to vote for it, if you agree to change it.

And that's why it's important for us Yolgnu people to talk about it. If you're finding it hard to understand this then I will have to come back with this man here, our lawyer, and we'll explain everything again to you to make it clear - land matters, law, parliament, the self-government act, how will we put this government into laws, and there are many other things.

Those green papers (pamphlets) over there, if you want to read them, they will tell you everything they will give you lots of information. Most of those stories in the green papers appear here in this book (showing it to the people). If you read this book it will tell you what you need to know and what you can do.

It is very important for us meeting you and talking to you. We are visiting sixty communities. Steve has told you that we've been to Yarralin (can't hear) Kintore, Finke, Urapunga, Roper, Numbulwar. Yesterday some of them went over to Gapuwiyak and Galiwinku and today we'll be going to Ramingining. The important thing is for all Yolgnu people to start telling us your views. We have to start collecting information from you mob and hearing what you have to say. We don't want you to be discontented when it's too late, when the government starts to change their minds and say "Why are we giving rights to the Yolgnu and Balanda people". For government people like holding onto laws and keeping the power to themselves so they can control everything.

Ms BAKER:

Can we ask you some questions, Mori?

Mr LANHUPUY:

Yes, after I've finished talking, then I'll let you ask some questions. I will repeat it. This is really important, please let's all look at this very carefully. We are not saying, "Give us your answers now". That's not what we want, we don't have a time-frame on this one. Give us your answers maybe at the end of this year, or maybe next year. When everybody is satisfied then we'll all vote on it. This paper is processed in three stages. The first stage is going around meeting with you mob talking about this, advising you and asking for your views and your opinions. The next step is to have a Constitutional Convention. When it's time for this Convention we'll get different representatives from different organisations from all over the Northern Territory. They will all look at the papers submitted, read what we've written down. When they all come to an agreement then it will become a constitution. Then everyone will vote throughout the Northern Territory. If you all disagree to that draft constitution we will throw it away and start all over again. If your answer is yes to the paper, then we will have a constitution voted in by you. We're going through three stages. It's important for us, this is my thinking - this paper is very important.

So what I want is to talk about this to you mob and let's discuss it. Children - it's a good thing that

you're listening to our conversation because later you too will have to vote for this (paper) - later on, when we will be dead and gone. This will affect you when we're dead. It's good that you've come along here. If anyone has any questions to ask us please do so. Any questions about laws, any questions?

Mr DJAWULMA:

Let me talk. Everybody listen and try to understand this. This is what it means. My culture, my laws, my customs and my land rights have to be put into this paper. For a long time Canberra have been interfering with our laws. I have worked for the Northern Land Council for a long time so I know. The laws in Canberra are not straight, they are still crooked. You all must understand this. The government in Canberra is always taking our laws away from us. If I die, then my children and my brother's children will grow up to have this law, our culture and our customs. You know how we never recognise each other or understand each other here in Yurrwi (Milingimbi). Whenever there's a ceremony held here, some people say, "Hey you mob let's go over to the ceremony." Some say, "No, you go, we'll stay." Or when a person dies over at Galiwinku, Ramingining, Yirrkala or Gapuwiyak, some say, "Hey, we have to go over to so and so for the ceremony." Then some say, "No, only you mob go, he/she belongs to your family." We must work together. Let's put a law in for our culture, not today but maybe we'll wait until next year. This is what Wesley meant by saying that. All of our laws and customs must be put down in this paper.

Mr LANHUPUY:

If you have any more questions to ask, ask us. (can't hear) The Balanda people too, nothing's stopping you from writing personal submissions to this committee. You will find all of the information necessary in the back of that booklet there or phone back to Darwin, reverse charges. Talk to this bloke here, the Executive Officer, anytime. Send anything you feel like writing in. It's not just for the whites and it's not just for the blacks. We're asking everyone to partake in this exercise. In the end there'll be a Territory Constitution.

Ms BAKER:

I just want to ask the (can't hear)... from the Northern Land Council about what I've just heard this morning from our two DEET officers. Is it true that this committee is going to scrub our land rights or anything like that? Is it true?

Mr HATTON: No, we are not taking your land rights, just the opposite. Now we have been saying all the time, the CLP and the Labour Party in the Northern Territory are both saying that we are going to guarantee the continuation of land rights. But, if you do not trust us, if you do not trust the government and want to make sure that the government cannot go back on its word, you put it in that law. You write it in the constitution and then the government cannot touch it.

That is what this law is. It is a law over the top of the government. You might say to me now: 'You might tell me now, but you might walk away and do something different'. Well, if you do not trust us, that is when you put it in there and you say: 'There, the land rights have got to stay'. That is what a constitution is. That is how you can actually make it stronger for you.

Ms BAKER:

That's one party talking, now we want to hear from the

ALP, Balanda ALP, not only Wesley, but on the Balanda side too. We want to hear from the Balanda ALP. You explain everything like the NLC, who have been translating a lot of this information to do with this subject, very wrongly (strongly) to Yolgnu people.

Mr HATTON: That is right. The NLC stuff is just wrong. They are saying the wrong things to you. It is just not true.

We have never said that we are going to take the land off you. We have never said that. We might say - and Wesley you interpret this to make sure I get it right. Look, I ask you, do you think the Land Rights Act, all the words in that are perfect? Or do you think there are ways it might be able to be done better? I don't know and I am asking you.

That is one of the things the Northern Territory has been saying. If, in fact, it is going to become a Northern Territory act, we could go and sit down with the Aboriginal people and say: 'Is this how you want it to work?' We could ask you - not tell you. We have got to go and ask you, not tell you - we have to go and ask and talk about it as Territory people together. That is not saying I am going to take your land away. That is saying: 'Let us talk about it and how we are going to do it'. All right? But no one, not the Labor Party, not the CLP, no one wants to take the land

away from you. And, if you do not trust us, if you think I am going to speak and tell lies and say one thing and go another way, if you do not trust me, then you make sure you write it in that constitution so I cannot touch it. Is that clear?

Mr LANHUPUY:

This is what this law is like. If Northern Territory people agree to have this constitution which include matters relating to land, law, parliament, self government, what's the other thing, local government. If you agree to having a constitution then people's rights, freedom of rights, religion and Yolgnu customs will be put into it. If we get this constitution, then it will include our land rights!

Then the Parliament in the Northern Territory won't have the power to break this paper, again. When this paper has been written down it will be returned to Yolgnu people to vote for in what is called a referendum.

At the moment our land rights are like the Governor General's ordinary papers. If the Labor Party in Canberra decides to throw our land rights away by an act of parliament they can, like what they're doing now with funding for education for Yolgnu people.

At the moment these are the things that we're exercising here in the Northern Territory - they're not in a constitution. We only have the Self Government Act. If we put all of our land rights and laws into this paper, then you people will be able to overcome parliamentary powers, because you are the ones who vote for us mob. That Constitution will then be well above the politician's heads. And the Yolgnu people will do the voting for this. It will return to Yolgnu people - the people will have power in the end. So if you want land rights entrenched so the politicians won't play around with it then lets look at this constitution. When the people want to change it they have to vote to change it. That's the only time when it can be changed.

Ms BAKER:

What about the ADC and DAA? We've been seriously thinking that they've been budgeting for us for a long time from the Federal side and we would like to see it done in the Territory because the Territory people know about our area better.

Mr HATTON: That is not a constitution question, but that is one thing. Once you get this written down and you say that that is the way you want to go and you have got that worked out in your constitution, then we can talk separately about whether your funding comes through the DAA or ADC or whether you do it through the Northern Territory government. We can talk about that with Canberra now. That is another question. It does not have to be the same as this one.

After you get all this together, you can ask later if you want to become a state. You can ask that question after we have done this job. If the people say that they do then we can all decide to go and talk to the Canberra government about who is going to do what - what the Northern

Territory will do and what the federal government will do. We start talking to them about that then, but we cannot even start to do that job until we have written this law.

Mr LANHUPUY:

Yes, this is really important. At the moment Canberra

is taking care of our responsibilities. It's impossible for us to have those responsibilities because we don't have a constitution. They've got the power over us. Once we have a constitution, then we have the right to fight for our responsibilities for the Territory. Do you understand? This paper will broaden our jobs. If we don't have that paper we will still have to rely on the Balandas (Canberra people) for jobs.

Mr HATTON: There are many things like this that we have to talk about. It is going to take a long time and that is why we have to start to do this job. It will not be done quickly, will it?

Wesley talked about land rights. When you want to put that in there, you will have to go and talk to other people in the Territory too, and you will have to explain to them why land rights are so important to you, so that they understand. When they understand, that is how you stop the fighting occurring. This is not to make people one above the other, or that way around, but to try and make people equal and that is how we do that. That is why it will take some time to talk it through.

It will not be easy, and I reckon there will be a lot of arguments and a lot of talking, but you have to start, haven't you? If you do not start talking, you will never get it fixed up, and that is what we have got to start doing.

Ms BAKER: No, the NLC will say stay with the federal government.

Mr HATTON: I am asking you. You tell me that.

Ms BAKER: I would like to ask now (inaudible) that was here before, because we never ever get things (inaudible) nowhere. No, (inaudible). Like has been working in the area officer for a long time because (inaudible).

Mr K DJUPANDAWUY: Can I ask you a question because I believe there's a lot of different organisations and departments who have questions to the communities, different communities. They were talking about the same nhawi statehood, constitution. Have the Territory government asked these organisations or have they consulted with them. Because there'll be lot questions back in the communities, different communities, There'll be lot of questions about statehood.

(can't hear) Is it talking about the same thing when we talk about Statehood and a constitution? Territory Government... (can't hear). Have they consulted with them? Because there'll be a lot of questions back in the communities. (can't hear)... mori told us. There'll be lots of questions about Statehood.

Mr HATTON: To answer that, yes, we have tried to. We have written to the NLC, the CLC, the Tiwi Land Council and to all the other different organisations and told them what we are doing. We have sent them all that written material. We have asked them to make submissions to us. We have not done this in writing yet, formally, but I have spoken to them asking if can we meet.

I would like my committee to meet with the full Northern Land Council, not just the executive but the whole land council, so that we can talk about these things, but they keep wanting to fight us. We want to sit down and talk with them and tell them what we are doing. I think it would be better if they came and we talked together about this so that they understand what we are doing better. Then, when they go out to talk to the communities, they know what we are doing. We are not trying to take land rights away from people. We are not trying to fight the land councils. We are saying ...

Mr Joe PETERS: (Inaudible) by the NT government (inaudible) land rights (inaudible) ...

Mr HATTON: Never, never.

Mr PETERS: ... Aboriginal land rights (inaudible).

Mr HATTON: That was written by the land council. It was not written by the Northern Territory government. Wesley, has our government ever suggested we are going to take away all Aboriginal land rights?

Mr LANHUPUY: The Territory government?

Mr HATTON: Yes.

Mr LANHUPUY: (speaking in language).

Ms BAKER:

Yes, we got that pamphlet sent out with the Northern Territory constitution written up like that. Maybe I know who that's coming from. It was the news media that was in the Northern Land Council.

Mr LANHUPUY:

Joe Peter. There were two issues which they were mixing up, and it was bit confusing. One is Statehood and the other thing is constitutional development. If all of the people in the Territory are satisfied with the constitution then Statehood comes after that. Then in the end we may decide to get Statehood which is in line with what Gutjan (Daisy) was saying, when she said, "When we take responsibilities for ADC and DAA that will be Statehood". Let's work on Territory peoples' rights, our rights first. Once we get that, then we might say to the Federal Government we want DAA and other state type responsibilities in our hands. For example, they run DAA over in Queensland, the Department of Aboriginal Affairs in Queensland, Tasmania, Western Australia. You know they don't have land rights in Western Australia. They have land tenure system, because the State

Labor Government has got power to look after Yolgnu land rights in Western Australia. For Northern Territory people - Canberra is looking after our Land Rights Act.

Mr DJAWULMA:

From faraway. We are here and they are there.

Mr LANHUPUY:

That's the difference; all the other states have got their own constitution but the Northern Territory people haven't. Maybe what you saw in the paper was in the media, maybe that was the newsletter. Of course, you will have arguments from interest groups like mining lobbyists, environmentalists, the Aboriginal land rights mob. A whole lot of people will be against this proposal because these people's interests are elsewhere. That's for you mob to decide. All we are saying is, "Here it is, think about it, talk about it and let us know". This is what we're saying. We are not rushing you - you do the thinking.

Mr DJAWULMA:

We want to step into this position and take on our own responsibilities, but they won't let us. These people that Lanhupuy was talking about reject us.

Ms BAKER: If they don't like us the Northern Land Council mob. They don't like us ...

If they don't like us the Northern Land Council mob. They don't like us to ...

Mr DJUPANDAWUY:

This is what midiku was trying to tell us about this constitution. Bapatji might have wanted us to understand the law for this Constitution, that's why he always asked us Yolgnu people to put our laws in this constitution. He went around to many communities trying to explain this to the people. He went around where the Northern Land Council's region is marked. I don't know but he might have a different story this time, after these the Territory government people have visited us. Then he might come from the Land Council and maybe have a different story on this now, I don't know.

Ms BAKER: Yeh, I know his tricks he's going to come out with a different story.

Yes, I know his tricks, he's going to come out with a different story.

Mr DJUPANDAWUY:

It's like that.

This constitution will belong to Yolgnu people if we put our laws in it, and it will become strong? I've asked this question because I was thinking about our

Chairman. Sometimes he tells stories differently because the Territory Government themselves argue all the time they have fights with other organisations over laws.

Maybe this is what he's after. I don't know. What is his proposal for this Territory Constitution. How does he look at it? That was my question. There's a lot of other different organisations and those people in the Aboriginal organisations work for him. I don't know about this. What are their questions about this constitution?

Mr HATTON: Wesley, made a very good point. He said to tell all the white people they have a constitutional right to speak on this subject too. It is for everyone.

Ms BAKER: Yes, they should, instead of people fighting for 20 years.

Mr HATTON: But let me say this. A constitution takes nothing away from you. You lose nothing through a constitution. A constitution gives you rights. If you do not have a constitution, you do not get rights. When you have a constitution, you get rights. You cannot lose anything through writing this. All right?

When you write this, you are making the rules about what the government can do and you are making the rules about what the government cannot do. A constitution will not change all the other laws straight away, and normal legislation will still take place. In Canberra, they keep passing laws, don't they? But they have to pass those laws inside that federal constitution.

That is what a constitution does. It puts the platform down. It gives your rights to you, the people. It takes nothing away from you. There is nothing to be frightened of with a constitution. You should grab it and say: 'Good, I am going to protect myself with this'. That is what a constitution is. You lose nothing, and I do not know why people are saying you should not do this job. Why would they be saying to people: 'Do not protect yourself. Do not make your rights strong'? Why would they say that to you? I do not understand that.

Mr LANHUPUY:

Joe Peter - look at it this way. The constitution to us Yolgnu people is like a land rights for us. Our land rights are our land rights. We have got power with land rights. Now we will be asking for this constitution so it will become a land rights for Yolgnu people, this paper here.

Ms BAKER:

At the moment it's only by word of mouth in Canberra.

Mr LANHUPUY:

At the moment we get orders from Canberra.

Ms BAKER: They've got the power there at Canberra.

They've got the power there at Canberra.

Mr HATTON: We have a little power, through the Self-Government Act.

Mr PETERS: How much for the land rights?

Mr HATTON: For land rights? None. The Northern Territory has nothing. Graham is a lawyer and he will correct me if I am wrong. The Self-Government Act says that the Northern Territory cannot make laws for land rights. Only the federal government can do that, at the moment. That is in the Self-Government Act. The Northern Territory government cannot make laws and cannot take laws away on land rights.

Ms BAKER: That's what the Federal is telling NLC that's what they're saying now. They if we go to the Northern Territory constitution. They reckon they're only just going to destroy it. That's what they say.

That's what the Federal Government is telling NLC, that's what they're saying now. If we go to the Northern Territory the constitution. They reckon they're only just going to destroy it. That's what they say.

Mr HATTON: The NLC has been going around saying that, if we become a state and if, when we become a state, land rights come to the new state in the Northern Territory, the Northern Territory government is thinking about throwing land rights away.

Ms BAKER: That is what they told us.

Mr HATTON: That is what they are saying. That is crazy talk isn't it ...

Ms BAKER: It just wants to be the big boss.

Mr HATTON: ... when you think about it? Think about it. Do you reckon the Canberra government would let us do that, when this handover is made? You just say that you want to make sure we cannot do that. What I am saying to you now is that if the people lock it up in this constitution, the government cannot touch it.

Ms BAKER: (inaudible).

Mr HATTON: Why would they say we are going to do that? We have never said that we are going to take the land away.

Ms BAKER: Too many urbanies working in the office and no full-blood Aboriginal working there. They should be all kicked out.

Mr HATTON: The only book the government has ever written on land matters, and I will send a copy to this community - Wesley, we will get a copy of the paper on land options to the people here. That book says that we guarantee land rights. That is the only book we have ever written on it. People are saying that, if you do not trust us, you should put it in the constitution so we cannot touch it anyway. I cannot be straighter than that, can I?

Mr DJUPANDAWUY:

Is it true mori - sorry - that these business people will cut back, I mean ...

Mr LANHUPUY:

Say it again.

Mr DJUPANDAWUY:

The business people, mining and others.

Mr LANHUPUY:

I've said this before in the beginning. This is the first process talking and discussing and exchanging views on the constitution. The next step is the big convention which will involve Yolgnu people, mining people, women's right, environmentalists, the works. They will all look at these papers for the protection of everybody's rights, and the lawyers will look at it, too.

Ms BAKER: We want to see out (can't hear)

We want to see our (can't hear).

Mr LANHUPUY:

We'll all have a look at it, and when we come to an agreement and then we'll vote - everybody in the Northern Territory will vote - there will be a referendum. If we all don't agree, we'll come back and start talking about it again.

Ms BAKER: When you have that meeting with the NLC, I reckon it is best that each council member goes into that one because that is where they hide our story. They do not bring it out to the communities. We never ever hear from them.

Mr HATTON: That is why we say we want to try and get a meeting, not just with the executive of the council, but with the whole Northern Land Council so that all the representatives can be there to speak to everyone, one to one.

Ms BAKER: I mean that (inaudible) committees. There is the executive and there is a committee.

Mr HATTON: The whole lot.

Ms BAKER: There is an executive and there is a committee ...

Mr HATTON: Yes, the whole lot.

Ms BAKER: Yes, but we want the local council to attend that meeting also because we do not get the information back here. We have other Europeans and none of them give it to us.

Mr HATTON: Yes. I think the more we speak to you, the better it will be, don't you?

Ms BAKER: Yes.

Mr LANHUPUY:

This is what Steve said. If you Yolgnu people don't understand or recognise this paper, we will come back to you mob and explain to you again. Make sure because in the end we will hopefully get this paper, that everyone, Yolgnu and Balanda, will be happy for in the Northern Territory. This is not only for Balanda, nor is it for Yolgnu only, this is for everybody because that paper (constitution) will be like a bible for us, and it will protect all of our rights. This is the only opportunity, because if we decide to take it later it will be too late. Let's put all our laws in this paper, so when the Labor Party becomes the government, whenever in the future, then we won't be able to change it. The laws for our land rights will be strong and permanent.

Ms BAKER:

(can't hear) that later on.

Mr LANHUPUY:

Okay, once the constitution is made and the vote is on for the Northern Territory people, the constitutional process is finished and a vote is taken. The question that's just been asked is, will we be still controlled by Canberra? Graham?

GRAHAM NICHOLSON: Yes.

Mr LANHUPUY: The process is that the government in Canberra, whether it is Labor or Liberal would be stupid not to grant us constitutional rights, wouldn't it. Have they got the power to withhold that?

Mr HATTON: Yes.

Mr NICHOLSON: They do have the power but I would think that, if we have the referendum first (inaudible) the majority (inaudible).

Mr LANHUPUY: Throughout Australia.

Mr HATTON: What he is saying is that the Canberra government has the power. If the Territory people vote and 80% of the people make a really strong vote and say 'Yes'. Now, because we are only a territory, the Canberra government has the power to say that it will not let that law stand, but that would be silly because then the people have spoken.

We are still trying to think this through because this has never happened before in Australia. This is the first time, so we are still trying to think how it should go. We are trying to work it out, but we think that probably what will happen is that, when we get this constitution, we will go to Canberra and say: 'We want you to make this constitution to take the place of the

Self-Government Act because the people have said this is the law they want'. First up then, they would make this the Northern Territory Constitution Act to replace the Self-Government Act. That would bring it into operation.

It is important that we get this constitution in existence and in operation before statehood because, if it is operating at the time when we become a state one day then, under section 106, the federal government cannot change it. Only the Territory people can change it. If it comes in after statehood, there would be a possibility that the federal government might be able to muck around with it and change it.

So, if we want to make sure to protect this so that it belongs to the Northern Territory people, we have to find a way to get it in operation before we become a state, so that it belongs to the Northern Territory people only.

Ms BAKER: So the parliament will not be able to touch us then.

Mr HATTON: Yes, that is right.

Ms BAKER:

Because when they put that budget, when they put that money, then the Territory Government say, "We've got lots of people, a big population in the community", and the Federal people say, "No, but you only get this much". The Northern Territory government spend money on us, but they already make that decision in Canberra (about money), and they can't do anything because we don't have statehood. That's what he was telling us. (not clear)

Mr HATTON: I do not want you to think that all the problems in the world will be solved when we become a state because they will not be. We will still have arguments with Canberra about money. Everyone does. There will still be those sort of arguments and there will be problems with laws and arguments backwards and forwards, but at least you have put the foundations down, the roots down, and have set the direction. At least you give it that direction. It will not solve all the problems in the world, I promise you that, but it is a start and will make things a bit better. And it will see that your rights are protected.

Ms BAKER:

A questionnarritj, when you went to the last meeting, NLC meeting, did you bring up this matter about the constitution in the meeting?

Unknown (Narritji?)

No - nothing.

Ms BAKER:

Nothing. Tony do you have a question concerning Milingimbi?

Mr LANHUPUY:

(can't hear) I didn't see Babatji (Galarrwuy) in Gove.

Unknown

I don't have land rights.

Mr DJERRINGAL:

Don't ask any more questions. We've only just started talking and we've still a long way to go.

Unknown:

But we're still sorting out some ideas.

Unknown:

Anybody got a question?

Ms BAKER:

How are we going to ask all of these questions?

Unknown:

Let me ask Joe Peters.

Mr HATTON: Do any of the white community have any questions?

Ms BAKER: Yes, tell them not to push us around.

Yes. Tell them not to push us around.

Mr PETERS: If our laws were in a constitution, would we still have to see these boats coming in, like the fishing boat out there in the river anchored in a restricted area?

Ms BAKER:

I didn't hear that.

Mr LANHUPUY:

That problem is now in the hands of the NLC. The Northern Territory Government has forwarded the job on the sea closure legislation to them.

Unknown:

I see.

Mr LANHUPUY:

All this area should be closed. The NLC is responsible for all of this and they're not pleasing you.

Ms BAKER: Too busy making money.

Mr LANHUPUY:

Already the legislation that the Northern Territory Government said ...(can't hear) - sea closure 2 kilometre law. This area starting from Dhabila should be closed.

Mr PETERS: There's a boat anchored at Dhabila.

Mr LANHUPUY:

The police and the Land Council will look after that.

Ms BAKER:

And what about the teachers, where do they get money from?

Mr DJAWULMA:

We get our own money for ourselves. We dig for money ourselves. We get them from Canberra.

Ms BAKER:

No?

Mr HATTON: All right. I have been asked what sort of responsibilities the Northern Territory has now, under the Self-Government Act. It has most of the responsibilities that the states have. It has responsibility for health and education services, the schools, local government, the primary industries, looking after all the primary industries and the fishing. All that is the Northern Territory government's responsibility. The Northern Territory government has a responsibility for fishing up to 10 km out to sea. Once you go past 10 km, it is a federal government responsibility. That is where they draw the line. If you want to go barramundi fishing, that is Northern Territory waters. If you go out chasing mackerel or tuna offshore, that is in federal waters. That is the way they draw the differences.

Almost all the mining in the Northern Territory is the responsibility of the Northern Territory government. All of it except uranium, because uranium is federal. They kept that. And they kept all the mining in Kakadu, no matter what sort. Coronation Hill is a federal responsibility because it is inside Kakadu. That is one area where it is different to the states because in the states all the mining is for the state. That is where the difference is.

We look after all the parks, all the national parks in the Northern Territory. Katherine Gorge, Litchfield and Gregory, the West MacDonnells and so on, all the big parks except for Uluru and Kakadu. The federal government kept those 2. We have been arguing about them too because we say that, everywhere else in Australia, all the parks are looked after by the state governments. That is why there are arguments about Kakadu and Uluru and why we are saying they should be Northern Territory parks. That has nothing to do with land rights and all those sort of arguments. It is to do with the fact that it is a state-type function. That is what the arguments have been about.

So there are those sort of little differences. As I said, health, community developments, all the transport and works functions - the airports, roads, bridges, barge landings, all those sort of things - are done by the Northern Territory government. Housing is provided by the Northern Territory, and all the lands administration, except Aboriginal land.

All the land that is not under the Land Rights Act is administered by the Northern Territory government, but the Aboriginal land rights land is administered by the federal government. That is why there have been arguments about where that responsibility should sit too. It is all mixed up.

We have most of the state-type responsibilities under the Self-Government Act except for those things like the Kakadu and Uluru National Parks, uranium, and the Land Rights Act. And there are some other strange things. We cannot get royalties for the offshore oil and gas. That goes to the federal government. There is an argument between the trade unions and the bosses on industrial conciliation and arbitration, and that is still with the federal government. We cannot get it back. They have cut us out of that one too. That is where the differences are between the Territory and the states.

Mr LANHUPUY:

That's basically the main reason why we've come here.

There would have been six people from the committee here. Three on his side (CLP), and two more on my side (ALP), to bring you this paper. The main reason we're here is to say, "Here look at this, think about it very carefully and then feed us back with your views". Don't rush. Go through it carefully, ask everyone to come to the community meeting and ask us to come back any time.

Mr HATTON: One big difference between the Northern Territory and the states is this. We do education, health and things like they do in the states, but the big difference is that, in the states, the federal government cannot take the responsibility away from them because they are protected by the Australian Constitution. That stops the federal government from being able to take away those things the states are doing.

Also, if you live in one of the states, the federal government cannot just take your property from you, your land. If it does, it has to pay you, because the Australian Constitution says that the federal government cannot take that land except for Commonwealth purposes and then the land must be taken on what are called 'just terms'. That means the federal government must pay for any land it takes from you. But, in the Northern Territory, we do not have that protection. The federal

government can take your land from you. It can take my land from me. It can take my property and it does not have to pay me for it, because I do not have protection under that constitution and that is because we are not a state. The federal government can take away jobs that the Northern Territory does, some of the functions like providing for education and health services or whatever. The federal government can take over those responsibilities because the Territory does not have a constitution to protect it, as the states have.

That is what we mean when we say we are not a constitutional state. We are only able to do the things we do because the federal government allows us to do them. If it changes its mind, it can take those responsibilities away from us. There is an old saying: what the government gives to you, the government can take away from you. What the people give to themselves, only the people can take away. That is the difference with a constitution.

Mr DJERRINGAL:

Yes, that's just fine. Are we finished talking now?

Unknown:

Yes.

Ms BAKER:

It's all right, but what if they changing their mind and try to translate our story, what we've said differently.

Mr DJERRINGAL:

Yes, this is just fine - this must be the last meeting. Don't come back too much.

Ms BAKER: We'll keep writing to the Northern Land Council.

Mr DJERRINGAL:

It's okay - it was a very good discussion.

Mr LANHUPUY:

We're finding it hard to come back to meet Yolgnu and Balanda on how we think. We'll only get that view once this convention is held. Then we'll look at all the papers that we've collected and hopefully form a opinion on what people are thinking about constitutional development in the end. But it's too early yet for us to make up our own mind.

Unknown: Yes.

Mr LANHUPUY:

At the moment, we're all going over to places collecting stories, information and views from both Balanda and Yolgnu people so that this paper of ours will turn out to be a good one in the end.

Mr BAKER:

Would it be alright to make a combined trip mori?

Mr LANHUPUY:

Where to?

Ms BAKER:

A combined trip for the Northern Land Council and the Committee.

Mr LANHUPUY:

Only if you people in the community allow us to get together and come because you will have to listen to our arguments.

Ms BAKER:

What happens now is that different parties come at different times. Each person that comes to advise us has a different opinion. So if we just keep on looking at these pamphlets here ... (can't hear). We have to invite both of you to come next time. Then there will be a proper understanding. That's what makes it confusing because we don't know what to think.

Mr HATTON: It is the same all over the Northern Territory.

Ms BAKER:

You see that's the - our Yolgnu way - we do it like this. You making trouble - you know - you're making trouble we sort it out right here. But these western ways are different. One group come one day and another group come the next day and it's no good like this.

Mr HATTON: In many ways, writing a constitution is a bit like the yolgnu way of doing things, isn't it?

Ms BAKER: Yes.

Mr HATTON: Getting them all together. I have to say that there will be a lot of arguing to start with, because when people have different views they argue with each other but, if we talk together and try to sort it out, we will start to find the way. It will take a lot of patience and, I guess, it will take a lot of endurance. We have just got to keep going at it, and use perseverance.

Ms BAKER:

That's what happened mori when the law for the Northern Territory was changed.

Frank FARLEY: When the Northern Land Council comes out to talk to you about this constitution and they tell you these stories, you should be telling them your stories and telling the land council that they are working for you and they should be meeting and talking with these people. These people are having problems trying to talk to the land councils, and you should tell the land councils that you want them to talk to these people because this constitution is very important. Tell them that everybody needs to get together. They should not fight about the constitution. People have to get together so that everybody gets their story across, and the only way they can do that is to go and talk to these people.

So when the land council comes out and tells you these stories, ask them if they have talked to these people. If they say that they have not, then how can you believe these stories because they have not talked and found out what it is all about themselves?

Mr LANHUPUY:

It's already been changed - what is it Frank?

Ms BAKER:

The governments didn't change that.

Mr FARLEY: The lands council works for you people.

Mr DJERRINGAL: I think the land council should listen to Yolgnu people - what they think.

Mr FARLEY: You people have to tell the Lands Council what they want the Lands Council to go and talk to these people.

Ms BAKER: After sitting in that office at Northern Land Council they have been asking advice, advice - James Galarrwuy no voices from the community. That's where it's all wrong.

Mr LANHUPUY:

Myself and Babatji had an argument in Katherine. He said to me, "Why are you with this mob? Both of you parties, the Country Liberal Party and the ALP? Are you selling our land rights? You don't do your jobs through us, the Land Council mob". I replied, "The Northern Territory Parliament has the right to do that. We can go and ask Yolgnu people for their opinions. And this constitution gives people rights to vote for their religion and freedom, and for their own freedom of press". And I told him, "And you stop cutting Yolgnu people off from us. If they want to talk to us, let them talk to us - loosen their strings so they can talk on their own." It's only been ten years since we got our voting rights. That's one of our rights and we've got the right to vote for this constitution. If we try to stop each other from asking the governments for our rights then our roots (djalkiri) will be looked after by another interested organisation.

That's why we will have to go listen to your stories. You get the opportunity to give us your opinions. We want to talk to people publicly, to anybody Yolgnu and Balanda in any community, about their laws. That's why we're all going around meeting people. The important thing is that we've got the right to vote now the power is available. Let's use that power to vote. The power of voting is important for us Yolgnu people. It was only ten years ago that we got voting rights. Once we use this power the Balanda people will realise that Yolgnu people are beginning to understand Balanda politics, and how we will put our laws into it. You can use us or the Land Council for your benefit. We are asking you to look at this paper, and you can ask questions. Frank (Farley) and Rick (Gray) will be available. What Gutjan has said, if you want us and the Land Councils to return it's alright with us.

Ms BAKER:

Yes, we want you to do that, because they sometimes brain wash people. What about the (can't hear), what do you call them, ABSEC, ATSIC something. Is that been happening or what?

Mr HATTON: That ATSIC thing?

Ms BAKER: Yes.

Mr HATTON: That is that Gerry Hand thing.

Ms BAKER: Yes, the Gerry Hand thing. Has it got another hand?

Mr HATTON: Do you want my opinion on ATSIC?

Ms BAKER: Yes.

Mr HATTON: I think it is terrible.

Ms BAKER: Yes, I think it is too because one person in the Northern Territory is not going to represent full bloods.

Mr LANHUPUY: They gave us 1 extra; 3 now for the Northern Territory.

Mr HATTON: There are too many things wrong with it, I reckon. I see a lot of fights. I look at the boundaries that they drew. I look down at the Centre and the boundaries go through the middle of the Aranda lands. Half the Aranda people are there, and half the Aranda people there. And they have cut up Anmatjirra. It is all mucked up. They can't get that right. The boundaries are not even following the roads. They have got these little (inaudible) here putting people together. I reckon that is sort of fiddling around with votes. So this mob and that mob, they are on our side and that mob is not, so we put these 2 in with them so that they cannot push them under in the voting. It does not seem right.

How are they going to do it? They say that this is going to be Aboriginal self-determination and Aboriginal people making the say, and when you look at it and you look at (inaudible) and he says well, the ATSIC things when they are talking about these things which are what DAA do now, on those ones they have to do what the minister says anyway ...

Ms BAKER: Yes.

Mr HATTON: ... like the DAA, and those things that were the ADC-type things they do them like they were the ADC before. So what have you got?

Ms BAKER: Nothing.

Mr HATTON: It is not going to change how they will work from day to day. And who are all the people who will do all the work? Where are they to come from? Are they going to turn around and say: 'Oh, we are going to make the land council the ATSIC?'. Is that what they are going to say? I do not know. It just does not seem to come together.

I do not think it will make things run better for Aboriginal people. It is going to cause lots of arguments between the federal government and the state governments because there will be a battle about it, because the state governments are still doing things here and the federal government is still doing things there, and this ATSIC thing is coming up the middle. What happens if the ATSIC does something wrong? The minister still has to be responsible (inaudible). If the minister is to be responsible, then the minister has to have a say.

If they want to talk to Aboriginal people they should form a consultative thing with the minister and not mess around. They should set it up properly so they have people that really can speak on behalf of the communities and not just create a balanda voting system for it. They should set it up so that the yolgnu leaders speak.

Ms BAKER:

Yes, we put that proposal at the Arnhem Club and then, when he went to the DAA office he saw (inaudible) and (inaudible) scrubbed it and put it in the rubbish dump, and he said: 'I will try it my way first'. They told us. That is why we do not want DAA there, we want it in the Territory.

Mr HATTON: I think we have covered all the things we need to talk about. Okay, thank you very much for talking with us. Thank you. I close the meeting.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

GAPUWIYAK — Friday, 5 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Douglas GARRTHANDHAN
Mr Allan BANGGANA
Mr Bill MANYDJARRI
Mr Wilson WIRRKUWUY

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 5 MARCH 1991

MR GARRTHANDHAN:

We have our Yolgnu leader here, the one who looks after our laws, and it's also good to see our local staff here with us today. This meeting is not going to be very long because the committee have to leave at 3 o'clock, so let's not waste their time. Let's give them the opportunity to come back another time to give us more information. They will only given us a rough idea today, so we need to be ready when they come back next time. Today they will tell us a few stories, why they have come here and why we have gathered here today. I will now ask the Chairman of the Committee to speak.

Mr HATTON: My name is Steve Hatton. I am the chairman of this committee of the Northern Territory parliament. It is not a government committee; it is from the whole of the parliament. If you look at the back of this book, you will see the photos of all the members of the committee. There are 6 members on this committee. It is not like a lot of things you see in the government where you are always hearing about the Labor Party fighting with the CLP and the CLP fighting with the Labor Party. On this job, the Labor Party and the Country Liberal Party people are working together. That is why this committee has 3 members from the Country Liberal Party and 3 from the Labor Party, including Wesley Lanhupuy. He is a member of our committee and we are working together on this job.

Our job is to write a special law for the Northern Territory people. It is a law called a constitution. This has never been done before in the Northern Territory. This law is a special law that is made by the people and it becomes a strong law, a law that sits over the top of the government. It becomes like the boss of the government.

We have been talking in a lot of places and people say that the white man's law is always changing. One mob is in government and the law is going that way and another government comes in and it changes it all another way. It keeps chopping and changing, backwards and forwards all the time. Aboriginal people, in particular, keep asking why there is all this chopping and changing. Aboriginal law is always the same, it is always going the same way, it does not change. They cannot understand why the white man's law keeps changing all the time and why they cannot work out what they want to do and go the same way all the time.

This law is the white man's way of doing things. We make this law from the people. When that law is made, it stays there and the government cannot touch it. It says how people are going to live together, how they go about making the parliament, making the government, making the courts and making all those things work the way the people want them to work. The people say to the government: 'You go down that way'. When they put that law there, the government has to walk along the same way as that law and that law becomes the boss over the top of the government. That is the way the people have the power and say how they want this Northern Territory to go.

All around Australia, the governments in Canberra, Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania have a constitution over the top of them. Those constitutions tell those governments what they can do and what they cannot do. They have to work inside that law and the government cannot change that law. Only the people can change

that law. Do you remember that, last year, you were asked to vote to change the constitution. They asked you to say yes or no to 4 questions about the Australian Constitution. The federal government had to go and ask the people. The people looked at it and said no and therefore the government could not do it. It was put aside. The constitution remains the same as it was and that is because the people are the only ones who can change anything about this law.

In the Northern Territory, we do not have a law like that. Because of that, the federal government can do whatever it likes because there is no constitution over the top of it telling it what it is allowed to do in the Northern Territory. That is because the Northern Territory people have never written that law. We are coming around to tell all the people of the Northern Territory that we all have to start thinking about what sort of things we think should go into this law. I am not going to ask you today what you want because this job will take us a long time.

Wesley, myself and the other members of the committee have been going all over the Northern Territory. We have been down to Kintore, Docker, Finke, the VRD, Borroloola and we are now travelling around Arnhem Land. We will be going to Darwin, Alice Springs, Katherine, Tennant and all over the Territory. We will be visiting 60 different communities, saying the same thing to them all. We are asking people to start thinking about the sorts of things that they think should go into this law, to start talking among themselves and getting their ideas together. If you want to know more about it, we will come back and talk about things that you want to talk about so that you can understand more and learn more about it.

When you get your ideas together, we will come back later this year or early next year and you can tell us what you think should go in that law. We will be going back around the Territory asking all the people what they think should go in that law. After we have got all their ideas together, we will have to sit down and try to write up what we think the people are saying should go into this constitution. However, we are not going to do all the job. We are just going to get some idea of what people are saying to us. This law has to be written by the people, not by the politicians or the government. It has to be written by you and the other people around the Territory.

After we have got the ideas of all the people, we will try to put together a big committee of representatives of all the people in the Territory, people who can speak on behalf of their communities, people whom you can trust to represent you properly. Those people will come together at a special meeting called a constitutional convention. They will have a look at what we have been doing and see whether we got it right. They will go through it and say: 'We like this. We do not like that'. They will argue about it. There will be people from Alice Springs arguing with people from Darwin and people from Gapuwiyak arguing with people from Darwin and so on. They will talk about it and argue out all the differences. You must make sure that what is important for you and your community goes in that law. Bit by bit, if all the people around the Territory talk and talk, we will be able to get a law that we all think is good, that will give us the sort of Northern Territory that we want and that perhaps can stop all the fighting that has been going on around the place and we can live together properly as equals.

After those representatives of the people have argued it through and have come up with what they think is a good law, it has to go to the people to vote yes or no. There are 3 stages. We do some work and then the convention has a look at it and perhaps changes it. Then, it has to

be put to a referendum of the people. If the people think it is good, they will vote yes. If they think that it is not quite right, they will vote no and we will have to go back and start again. We will have to keep working until we get it right. When we get it right and the people say yes, then it will become the law of the people. That law will then stay there and everyone will have to work within that law. It cannot be changed and it will mean that the Northern Territory will have to go down the way that the law points.

You put in that law all those things that are really important such as how you want to set up the government and the parliament and how you want to go about electing them. You also put in there things that are so important to you that you do not want the government to be able to touch them at all. You lock those rights in that law and the government cannot touch them. It might be your right to vote so that the government cannot take away your right to vote. That is so important. It might be your right to have your own religion or your own culture. It might be something to protect Aboriginal land rights. It might be something to guarantee protection of sacred sites. It might be freedom of speech or freedom to meet like this, freedom of assembly. It is those things that are so important that you think that no government, whoever it might be, should be allowed to touch them. That is what a constitution is. It is the people's law.

It will be a long, hard job. There will be a lot of arguments about what should be there and what should not be there. A lot of people are going to argue about it. But, we as a Northern Territory community must take on our real responsibility of working towards making this a good place for our grandchildren, for our grandchildren's grandchildren and for people in 100 years time. We must start working on this law to determine how we want our Northern Territory to be in the future. It is our duty. If you say that it is too hard, that you do not want to know about it, you will leave a mess for the future and someone else will have to fix it up. They will look back and say: 'Why didn't they do this for us? Why didn't they take on their responsibilities and try to work out the rules on how people are going to live together in this place?' That is the job we have got to do.

As I said, I am not here to ask you what you think should go in there. I am here to say that you must work to have your say in this law. Do not let someone else do it for you. You must ensure that your rights are looked after. We want you to read the material that we will leave with you, think about it, talk about it among yourselves and get your ideas together so that you can have your say in making this law. If we can make it a good law together, we might be able to make the Northern Territory a good place for the future and for future generations. That is what we are here to say. Please start working on this one.

Wesley, would you like to say something?

Mr LANHUPUY:

This man (Steve Hatton) has asked me to stand up and talk, even though I'd prefer to sit down and talk to you mob. I'm going to talk in Yolgnu language now so try and keep track with this bloke.

Thank you Chairman and thank you community for coming along. It's very good to see you all. Our Chairman of this Committee has already told you half of the

story. This committee is called the Constitutional Development Committee, and it has been formed to look into the laws of the Northern Territory for all Yolgnu and Balanda people. We're not only looking at the Yolgnu side of law but also the Balanda law. From these two we will try and put together a constitution. A constitution is something which we will put our laws in so they can become permanent in the Northern Territory, for all Yolgnu and Balanda people. At the moment what we are doing is going to different places and talking about this draft paper and giving people ideas on this paper. Then you then do the thinking. Look at this paper and talk about it, discuss it amongst yourselves, all Yolgnu people, and share your views with your Balanda friends and your children because later on when we have to vote for this law (paper) it will affect our children and our children's children in the future. That's why this committee is going around visiting over sixty Yolgnu communities throughout the Northern Territory. Our story is that you need to think about this paper and how you want to live by this law here in Northern Territory. The other States in Australia already have their own Constitution. For us Yolgnu people the constitution is our land rights. Now we are asking for a constitution, for all Yolgnu, Balanda, Chinese and Greeks whoever is living - living in the Northern Territory - so we can have a constitution for everybody and Darwin will look after it. This law will tell us how our children shall be educated and how many politicians we will elect for the Northern Territory Parliament. It will tell us how the police will make laws for us or how the Law Courts will run. This is what this constitution paper is for.

Also in this same paper we will have rights. Yolgnu rights such freedom for peace, freedom of rights and freedom of religion. Do we want all of these laws to be put into this paper? If we want to protect our sacred sites and our customs then we need to put them all into this paper so we parliamentarians cannot touch them. This paper will be above politicians.

Only you mob, Balanda and Yolgnu in the Northern Territory, will be able to vote to change it. The power will be taken away from parliamentarians and you Yolgnu people will have the power - people's power in this constitution. The people working in the parliament will only have the power in the Parliament. We will only be able to change legislation such as charging you extra on cigarettes and fuel, changing your education system or stopping you from having RATE programs, etc. These are the only things we will be able to play around with. We have to keep our eyes open, and keep the freedom we have that concern our customs and all of the other rights that Yolgnu people have.

If you feel like you have the freedom to have these things then put them all into this constitution paper. This is very important for us Yolgnu people, because we are learning more and more about Balanda laws through their work system. If we want to know more about their laws, let's start learning to play their games with them.

The other thing about this paper is that if we are to protect our rights then we have to work through this paper. This man Steve has already said, "We don't want your answers now, or next week or next month". If you ask me or this bloke here or our lawyer over there to come back to you another time we will do so. We will come back and explain to you more clearly so that you understand more and then you can tell us your views, your thinking. We're not pushing you. This is what we're saying, "Here's the paper, look at it and discuss it amongst yourselves then let us know". It's important for us Yolgnu people to understand when we feel discontent and say, "When are we going to be like the Balanda and have the same rights?" Sometimes we do feel that way and say these things. This paper will surely help us to have knowledge like the Balanda through jobs and other areas.

If you have any questions to ask, ask us, and if you want us to come back we'll come again next time. We're not forcing you. This is the first part of our program - going out and discussing the ideas on this paper with the Territory community the next step is when we call all of the representatives from every town and community, interest groups throughout the Northern Territory, to attend a big conference, perhaps in Darwin. We will then have to look at all of these suggestions on laws very carefully. We might say, "This law looks alright for Yolgnu and Balanda to have in the Northern Territory." Then after this Constitutional Convention comes what we call a referendum. A referendum is when you get to vote for this paper. It is when we get the opportunity to vote and agree or disagree to have this constitutional paper. If we all agree then we will have a constitution.

Parliamentarians won't be able to play with it or change it behind your backs. There's no way we can do that. If we don't agree on this paper in the referendum then we have to return this draft paper to all of the communities and start the same process all over again, advising both Balanda and Yolgnu people. This is the first step going around to places meeting people and telling them stories about this paper. We want you all to have a good look at this paper and discuss it amongst yourselves. There are some pamphlets here on this booklet for you to look at.

These green pamphlets will give you more explanations. They have more information in them. If you want to get these papers please do so. We will always be available to come back to you anytime if your community allows us. I just have to say again, "We are not pushing you". It's up to you mob to think about this, and whenever you're ready let us know and we'll come back and talk again.

Mr LANHUPUY:

If you want us to come back, ring us and let us know. Our telephone number is at the back of the booklet that we have been giving out to you. This committee welcomes personal submissions, group submissions and community submissions.

And if you have any rights or queries that concern you, write to us and tell us about them. Write to us if you have questions to ask or are unsure about how you will ask the questions. This is for us Yolgnu people. This man here asked me a question. He asked, "Where will our law stand? Who will look after it?"

Canberra already have a constitution, the Federal Constitution. Queensland have a State Constitution, so does Western Australia, New South Wales, Victoria, South Australia, and Tasmania. All of these States have their own Constitution but us Northern Territorians don't have one and that's why we are going around asking for your views and finding out how you feel about having a constitution for the Northern Territory.

Mr GARRTHANDHAN: (Dhalwangu language)

Yes, one more question. Is this law for both Balanda and Yolgnu?

Mr LANHUPUY: Who is the law for?

Mr HATTON: For everyone.

Mr LANHUPUY: Anyone?

Mr HATTON: For everyone, Yolgnu, Balanda, Chinese, the lot. All the people of the Northern Territory. That is why everybody has got to be a part of writing this.

Mr GARRTHANDHAN: (Dhalwangu language)

I have one more thing to say.

Mr BANGGANA: (Dhalwangu language)

One more question. When you talked about the government departments, are they involved in this constitution? (can't hear) Will we find it easy to put these government departments into this constitution?

Mr LANHUPUY:

Do you mean the services?

Mr BANGGANA: (Dhalwangu language)

Yes, any government departments or local governments like DAA, ADC or Lands and Housing.

Mr LANHUPUY:

We will talk about that later (can't hear). Ask that question again, later.

Mr BANGGANA: (Dhalwangu language)

We sometimes find it hard with those departments.

Mr LANHUPUY:

Talk a bit louder so this man can hear.

Mr BANNGANA: (Dhalwanggu language)

Please interpret my speech to these Balanda people. What are we going to do with these people and departments? Like when you said, "You've got your freedom and rights to stay in your community. You have the freedom to talk". You said these things but how are we going to put all of these issues into one law? Because a lot of us Yolgnu people do talk freely, with our own will. We also think that we have our rights for our freedom. But most of the time we find it impossible when they (the government departments) say, " No, you leave this, this and this and do it this way." Will we be able to put those kinds of laws into this constitution so we have control over what those departments say?

Mr LANHUPUY:

That will come later after the constitution. (can't hear) Those departments will still have those responsibilities. We are already running our own education, public services, police, laws, and parliamentary system. If you feel dissatisfied about these departments go and see them straight away. At the moment what we're doing is advising all Yolgnu people about this law, the constitution. Understand?

Mr BANGGANA:

Yes.

Mr LANHUPUY:.....

That will come later after the State does something about it, then we will work on this.

Mr HATTON: This is really the absolute basic law that says how you can elect the parliament.

Mr GARRTHANDHAN:

How many laws are we to make, and who and how many of us Yolgnu people will go to this meeting? Just the main people?

Mr LANHUPUY:

When this turns out to be a constitution then we parliamentarians won't be able to change it. It will be there until the Territory population decides to change it. Only the Territory population can say, "We need to change the constitution",

then we will have to vote for those changes. This power will be Yolgnu people's power for all Territory people. Then we won't have your power, because you are one's who elect us.

Unknown:

One more question?

Mr LANHUPUY:

Have your say quickly. Give your ideas to this man (Steve Hatton).

Mr BANNGANA: (Dhalwangu language)

I will have to talk to you because you can understand my language.

Mr LANHUPUY:

I'm listening.

Mr GARRTHANDHAN: (Dhalwangu language)

What about our law, Yolgnu laws. Are we going to put all of them into this constitution? Some Yolgnu laws, will be straight forward, some won't be so understandable.

Mr LANHUPUY:

If you feel you want your rights then think about them and put them into this constitution. Write them in. If you feel your rights have been threatened, write them down and put them into the constitution just like everyone else who wants to share their views with us.

Unknown:

Yes that's it.

Mr MANYDJARRI: (Marrangu language)

I've been listening to his (Lanhupuy's) advice, listening very carefully to each word he's been saying, and what he's saying is how it should be. We should always have one Yolgnu law, but the government are always coming and trying to change our laws. You government people shouldn't be in such a desperate hurry. You must be patient until you hear from us Yolgnu land owners. If we say no then we mean no for sure. If we say yes then that's okay. That's why we have our law. The government people's laws are trying to put us all into one law, to share one law both Balanda and Yolgnu. We Yolgnu and Balanda in the Northern Territory are looking at what you really mean - what these words that you speak really mean. To me this paper is like a picture, (showing it to the

ladies in the community). Look at this paper, this paper will tell you to change our laws and to have new laws. This is why we have gathered here today. They have come here to show us, to give us ideas on this, but it's our Yolgnu decision. We must look at this law first from the base of our own laws and see how we are going to put them together, see whether they'll stay together or come apart.

Mr LANHUPUY:

To others I have to say that some people won't like this, some Balanda might say no to this constitution. Others might say yes we want it. We've still got a lot of arguing to do. People might get jealous of one another and try to reject others for not wanting this constitution. Let's all talk about it. How are we going to develop the Northern Territory for our children and our children's children? Let's start talking about what we think of the Northern Territory and its lifestyle. Let's put it the way we want it to be. Otherwise our dissatisfaction will continue to occur.

Unknown:

There's a lot more.

Mr LANHUPUY:

There's lots more to it. For example, this man feels dissatisfied with ADC, DAA, the local government and all of those departments. We are all looking into this big law that will bring all of the other laws into one big law which will be called a constitution. That's what we're all doing now.

Mr WIRRKUWUY: (Djapu language)

There have been three different languages spoken here today and yet we still really don't understand each others meanings. They have given us this paper to have a look at. Think back to how many meetings we have had. Remember we Yolgnu people used to sit and argue about laws, chasing up different ideas. Now this is what we have been talking about. Now is the time when it is all happening, we're getting all of the papers from these Balanda people sitting here. They shouldn't have to write up our laws, we should do it ourselves and then ask the Balanda people to come and look at them. Then after they've gone we will make our decisions. Then we will ask them to come back. When they come their story must be straight and they will have to leave our ways as they are. So when they get those laws from us they will put them into one law, and it will be well above all other laws, and they won't touch them anymore or they won't try and change them any more. This paper, the constitution, will be ours for the Yolgnu people because we will make the decisions for it whether we say yes or no. The laws that we put down in that big meeting (the Constitutional Convention) will be for our children and our children's children. This is the paper they will have and

then later there will be no need for us to argue again or dig into each other's laws.

Mr LANHUPUY:

In the big meeting, the big conference.

Mr WIRRIKUWUY: (Djapu language)

It's just simple and plain. All we have to do is talk about it, make our agreements and ask for this paper.

Mr LANHUPUY:

At the moment we're only doing basic things like discussing ...

Unknown:

Everything's just fine.

Unknown:

So we will recognise and understand each other.

Mr LANHUPUY:

You Lake Evella community must think who you want as your representative to go to this Convention. Think about who is a good and fair person.

Mr HATTON: How are we going to put that convention together. You have to think about what sort of people we will have there so that we make sure that we have representation of everyone from all over the Northern Territory, different thoughts, all coming together so that they are not going to hide things. They have to be up front so that they can be talked about.

Mr LANHUPUY:

Everything including land rights, mining and others.

Mr HATTON: Everyone has to talk about it and work out where they want to go.

Mr GARRTHANDHAN: (Dhalwangu language)

(can't hear) ... that's the idea. We don't have to be in such a hurry to ask them questions. Let's not doubt their ability to do this job. Let's not talk and say to ourselves that we know everything. Let's not ask too many questions on this one. Give them the chance and they will tell us what we need to know. They'll do the talking here in our community to us and we'll talk about the situation later. Let's not ask too many questions now because we don't know enough, yet. We haven't been through it yet. It's a good thing that this man (Lanhupuy),

my half brother, is giving us the chance to talk. So we will talk about it and try and understand but this is the first time we have talked about it. We haven't discussed this before, and we don't seem to have the right questions to ask. What my cousin said was right, we can talk and deal with this matter later but let's give Lanhupuy and the Chairman a chance to talk about this and deal with the various matters.

These people don't travel around separate to various places. they all go as one group. This man here, who we do not know, is reporting on what we are saying.

Mr LANHUPUY:

(can't hear) for us.

Mr GARRTHANDHAN: (Dhalwangu language)

This man, Lanhupuy, has become a leader in our community, a knowledgeable man (dalkarra). He's the one who sits in the Parliament with the government and listens to the Balanda people and the decisions and laws they are making in relation to Yolgnu people. Right? My cousin was asking the right question. Let's not ask too many questions too soon or we'll be misled. Let's stay on the same track as these people and listen to what they are saying or we might end up talking about different subjects. Lanhupuy will give us the chance to talk about it later. We need to be represented by one strong voice. Gapuwiyak people should come up with one voice, not with two or three, like a double tongued goanna. All throughout the Northern Territory people are now discussing this matter and then later on we will make decisions to have our laws firmly planted as one strong foundation. That's why they are going around asking for people's views, so we can establish this foundation. Canberra is looking after us and helping us. At the moment we don't have that foundation, not yet.

Mr GARRTHANDHAN: (Dhalwangu language)

At the moment we are under Canberra's power because the Northern Territory does not have a constitution yet. The Northern Territory now wants to step out of Canberra's control and stand on it's own two feet, Darwin itself. This will cover the whole of the Northern Territory, all of the people, but not yet. At the moment Canberra is taking control of everything because it has its own constitution. This is just to let you know in case we are heading in the wrong direction. We might not know where we are going and this is just to straighten it all out because we've never been through this process before. We have to talk about all of these ideas.

Last week during the public holiday we sat and talked about what are better ways for us to live and understand each other, because today we don't have a foundation yet. I'm not saying that we, Yolgnu people, don't have our law and

culture, what I'm saying is that we don't have a constitution. All of the Balanda and Yolgnu have their own laws and cultures, but we don't have this constitution together. This paper comes from the government. It appears to have many sides to it, many different meanings. It's like a mirror with many reflections which people look at and yet cannot see clearly. One minute it's there and the next its gone. Its deceiving us. We can't hold onto all of the governments thoughts.

Mr LANHUPUY:

I have to break these big words down and explain again to make it clear to you. This is what it really means (about the law). You Gapuwiyak people always stay here in Gapuwiyak, alright? Then some people may decide to move to their outstations (homelands), and they say, "I will work here for myself and try and develop my own home. Then DAA will help me by funding me directly. I will have to work by planting gardens and fruits and then I won't always have to rely on the Council." That's what we, the Northern Territory, are doing now. We are trying to get out of Canberra's care and stand on our own feet and work, to get things going for the Territory. Canberra's been looking after us for a long time. Yet we are now looking after our own Health and Community Services, Police Aides, Public Services (can't hear) legal system and other areas. We are already practising these jobs.

Therefore, the new system with a constitution should be easy for us. There are four other jobs that we are asking for so they will recognise us and give us our papers. With these we will have a law of our own for the Northern Territory. Canberra has been looking after us while we were young, but now we are grown-ups and now we have to look after ourselves and our laws. For example, a person gets tired of living in town and decides to go away and establish his own homeland saying, "I must leave this place and go away. I will work for myself on my own". That's what it's like - this is what it means.

We will have to come back again sometime, when there's a community meeting. For now you talk about this, get it straight. Call me any time and I'll tell you more of these things.

Mr LANHUPUY:

When a big meeting is on call these Balanda people to come again.

(Everybody's talking at the same time)

Mr GARRTHANDHAN: (Dhalwangu language)

They have opened this up for us to look at and talk about.

Mr LANHUPUY:

Balanda people have the right to comment on this constitution too. We welcome written submissions and personal submissions on any matter, Yolgnu or Balanda, anyone. This is not just for the Balanda nor is it just for Yolgnu. It's for everybody in the Northern Territory Chinese, Greekmen, whoever you are.

Is this all for now?

Mr GARRTHANDHAN: (Dhalwangu language)

He was the last person who said (can't hear). Now you can talk. This, man here (Lanhupuy) and all of these other workers (Balanda people) have come here to let us know what's happening (can't hear) and to look at what laws can be made. He, Lanhupuy, is the one who is looking into all of the complicated ways the government is making laws. He's listening for Yolgnu people so we can then understand what the government is doing. We have selected him and these others to do this kind of job, to do our talking on behalf of Yolgnu people. Lanhupuy took that position and now he is having a hard time with governments and their decisions. He's chasing the governments for our laws, and he comes back to us with stories and tells us what he's been hearing and collecting. Now he is here with the others telling us, advising us, so we can put these ideas together and come up with one voice, whether we are Yolgnu or Balanda. The committee are only giving us some ideas. Banggana has just asked me when are we going to have another meeting so we can discuss this matter. We would like our Balanda friends to know too so they can help us to understand more.

Mr BANGGANA: (Dhalwangu language)

And think about it.

Mr GARRTHANDHAN: (Dhalwangu language)

This lot will help us (pointing to some Balanda people).

Mr BANGGANA: (Dhalwangu language)

Try and think about this really seriously.

Mr GARRTHANDHAN: (Dhalwangu language)

Yolgnu people think about this and also you Balanda staff that are living here with us. Our staff can help us with this too. When Lanhupuy comes back to visit us again we will have the right questions and decisions in our minds. When Lanhupuy returns we will talk about it more. Myself, Lanyipi and Bangana will try and find out what is the best time to get all Yolgnu people together, all Gapuwiyak people and we'll have a barbecue and talk about this more like we did last week, remember? We helped organise food for everybody, we all ate, talked and then went home.

Mr BANGGANA: (Dhalwangu language)

Please think about this very seriously, whether you like it or not. Don't talk about it now and then later forget about it. Talk to yourself and ask yourself questions. Say, " Am I going to trust Steve Hatton or Lanhupuy?" Say that to yourself. Does it sound alright, this constitution?

Mr LANHUPUY:

Sounds great.

Others.

Great.

Mr BANGGANA: (Dhalwangu language)

We will say, let's have a meeting, a community meeting. That man Steve has already told us. We are the ones that have always had a law from the beginning, but for those Balanda people their laws always change. That's why we are asking to have a meeting so we will know what's happening next. Let's talk about this like Lanhupuy has in our own language, so we can then understand each other properly.

Others

Yes, yes I agree. You're the boss.

Mr LANHUPUY:

Do you have anymore to say?

Mr GARRTHANDHAN: (Dhalwangu language)

I have finished talking. Do you have anymore to say?

Unknown:

That's all.

Unknown:

We are all pleased.

Unknown:

We will have to talk about this later, when they leave.

Mr HATTON: I think we have talked about everything. Thank you very much for having us along to talk to you today about this. In finishing, I just want to ask both the Yolgnu and the

Balanda people here to make sure you do this job and are prepared to work hard and spend a lot of time on it. Lots of arguments have been going on around the Territory for a long time. If we want to try to find a way wherein we can live together with respect and make a place that we are proud of for our children, we have to do this job. We have to talk our way through all the arguments and find a law that we can all live by and be happy with. Thank you for giving us a chance to talk to you today and I hope we get many chances to talk more about this. Thank you.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

GALIWINKU — Friday, 5 May 1989

PRESENT:—

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the Committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Mr Keith DJINIYINI
Mr George DAYNGUMBU
Mr G. GURWANAWUY
Mr Jeffrey MALAWA
Mr DANGATANGA
Mr MAWUNYDJIL
Mr DAJANNANGA
Mr Richard GANDUWUY
Mr DATJARRANGA
Mr DJALANGGI
Mr DJIRRIMBILPILWUY
Mr DJILIPA

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording or many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 8 MARCH 1991

Mr Keith DJINIYINI: (addressing the community)

This is the last meeting before the Sessional Committee return to Darwin. We have to throw in our ideas and opinions for the constitution which is for all Northern Territory people. Now we have to talk about this constitution and make decisions, then we'll have a big community meeting about it later. If everyone ... (can't hear), then later the Sessional Committee will look into our Yolgnu laws. This meeting is giving us the opportunity to make decisions, so let's listen, ask questions and get some answers back.

Mr Keith DJINIYINI: (addressing the Committee)

Our apologies but we tried to ring you up yesterday but we were busy at a funeral and all of that and we couldn't get hold of you. We rang Milingimbi and Ramingining but Wesley came across here. On behalf of the Council and myself we welcome you to this meeting and we will start the meeting now.

Mr HATTON: Thank you very much for giving us the opportunity to speak with you, particularly as we understand that you are having a very difficult time at the moment. Obviously, you have gone out of your way at a very important time to meet with us. We are very grateful for that honour that you have done our committee and, on behalf of the committee, I would like to thank you for that.

We have been going around the Northern Territory since March on this job for the Northern Territory parliament. I am the chairman of a committee of the Legislative Assembly in the Northern Territory. It is called the Select Committee on Constitutional Development. There are 6 members on the committee and you will see their photos at the back of the booklet that we have sent out. Of course, Wesley is a member of this committee. This is not like other things that are occurring in the parliament. This is one time when both the Labor Party and the Country Liberal Party are actually working together and not fighting. We are both saying the same thing. We are both working on the same job because it is important that we are thinking like Territorians rather than playing party politics. I hope you can understand that. It is a very important job that we are doing. It is so important that we believe that we have to work together if we are to do this work properly.

What we are doing is working with the Northern Territory people to write a constitution. I guess you have all heard of constitutions. You have a constitution for your council or for a housing association. When you write a constitution for those sorts of things, you set out all the rules on how you are going to elect the council, what the council is allowed to do and what it is not allowed to do. Where you have a government, the people write the same sort of constitution. The people themselves make a special law which says how they want their place, in this case the Northern Territory, to work. They have to write those sorts of rules. They put those rules over the top of the government and they determine what the government is allowed to do.

It says how you go about electing the parliament, who is allowed to vote, who is allowed to stand as a member of parliament, when the parliament has to go back to the people to be re-elected and how you choose the government from the parliament. It also says what the courts,

the judges and the magistrates can do. The people write special laws which say that there are some things that are so important to them that they do not want any government to be able to muck about with them. It might be that the government cannot take away your right to vote. That is so important that no government can be allowed to muck around with it. Thus, you put in this constitution that you have a right to vote.

It might be that you write in there that you have freedom to practise your religion or for something for the protection of your culture so that no one can take it away from you. It might be protection for sacred sites or Aboriginal language. It might be a guarantee of your Aboriginal land so that no one can take that from you. There are all sorts of different things that people might think about and say: 'This is just so important that we are not going to let any government, no matter who it is, muck around with this. It has to leave this alone'. That is where the people make these rules. When all the people in the Territory make that law, it will sit there like a boss over the top of the government and tell the government which way it has to go and where it is not allowed to go. It is how the people take the power over the top of the government and say: 'You are our government. You have got to go that way'.

All governments in Australia, including the federal government in Canberra, have a constitution over the top of them. The governments in Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania all have a constitution over the top of them. In the United States, there is a constitution over the top of the government there. That is how you stop the government from being able to do something. Some places do not have a constitution - for example, England does not have one - and then the government is all powerful. It can do whatever it likes because there are no rules to stop it. If there is no written constitution, the government can do anything.

The government of the Northern Territory does not have a constitution over the top of it. The federal government does not have a constitution over the top of it for the Northern Territory. It can do whatever it likes in the Northern Territory because there is nothing to stop it. It can make any law it likes and it can take away any law it likes. If it wants to, it can take away your right to vote. It can take away your right to have any sort of government because the Northern Territory government - Wesley and I in the parliament there - is there only because of a federal act of parliament. If the federal government said that it did not want that any longer, it could repeal it and there would be no parliament and government in the Northern Territory. It can simply take it away. It cannot do that in the states because the constitution stops it. At the moment, your land rights are only under a federal act of parliament. I do not believe that it would ever do it, but it has the power, if it wanted to, to take away the Land Rights Act and things would be back to where they were 20 years ago. There is nothing to stop it because the people have not made their law to sit over the top of the government.

That is what we are working on. We must start to work on the writing of a law for all the people in the Northern Territory - yolgnu, balanda, Chinese, the lot. It will say: 'This is the way that we want this Northern Territory to go and this is how we want to get there'. The people will say to the government: 'We want you to go down that road'. It will have to go down that road because it is the people's law. That is the white man's way of doing things and this is a bit like yolgnu law. Your law has always been there and keeps on going the same way all the time. It does not change. However, balanda law sometimes goes this way and then it will change and go

back over that way. It goes backwards and forwards all the time. It is not like yolgnu law, is it? In this way, the white man also makes one law which keeps going the same way all the time. He may be able to fiddle it around or switch it around a bit, but it will still go down that one road. In this way, a constitution is very much like Aboriginal law. It sets the road, the way people have to live together and how the government is to work.

That is the job that we have to do. Once we make this law, it is the people's law and the government cannot change it. The government has to obey that law. Only the people can change that law. If the government wants to change it, it has to ask the people. Do you remember that, last year, there was a referendum on the Australian Constitution? There were 4 questions on which you had to vote yes or no. The federal government wanted to make some changes to the constitution but it had to ask the people. The people said no and the government could not touch it.

When we do this job, it will be the same way for the Northern Territory. The people will own that law, not the government. That is the way the people make the direction. That has never happened in the Northern Territory before. We have always had someone else tell us what we would have. You have had that all the time, haven't you? The people in Canberra told us what we could have. They said: 'We are going to give you self-government. Here is an act. This is how you are going to do it'. They never asked the people. If they want to change it, they can do so without asking us.

In this way, the people can say where they want to go. That is why it is such an important job. Because of the sort of law it is, it will be there for a long time. It will determine how the Northern Territory will be, not only for you and me, but also for our grandchildren and their grandchildren. We have got to ask how we want this place to be in 50 years time and 100 years time. Do we want all the arguing and fighting to continue or do we want to make some rules and work out how we are going to live together and make a place that we will be proud to leave for our children? We want a Territory of which we can proud to say:

'We did that for you. You have a place where you can grow and develop and live the life that you want to live'. That is a responsibility we have to the future. That is why we cannot walk away from it, why it is going to be hard and why it will not be quick. However, it is a job that we have to do, not only for ourselves but for future generations. Our job is to fix this place up the way it should be for future generations.

You cannot trust the politicians to write this law. The people have to write this law. That is why we are coming around now saying that we all have to start doing this job now. At the moment, We are not asking you to say what you think should go in there. We are just asking you to start reading this material, thinking about it and coming up with ideas. You might think of ideas apart from the ones in these books. Talk to Wesley and myself. If you are not sure about something, we will get someone to come and talk to you. After you have got your ideas together, we will come back later this year or early next year and you can tell us, individually and as a community, what you think should go in this constitution.

We are doing that all over the Northern Territory. We are visiting 60 communities. We are going everywhere from Kintore and Finke to here and over to the VRD, the Barkly, Borroloola, Alice Springs, Darwin, Katherine, Tennant Creek - all over. We are saying the same thing at all

places. We are asking the people to start thinking about this. We are asking them to have their say in this and to ensure that, when the people of the Territory write this law, it will look after the interests of all the people and determine how we will go forward together as Northern Territory people - black and white. It must protect the things that are important to people. However, it is important for you to think about the problems that the other guy has too.

We are just going to get some idea of what we think the people are saying and then we have to do another job and we need your help on that too. We have to bring together a big committee of representatives of all the people of the Territory. These are people whom you believe can speak on behalf of the various communities, not just here but in the Centre, Darwin and all over. They will be all types of different people - miners, pastoralists, Aboriginals, women, shop people from Darwin or whatever. We will get all the different sorts of people and bring them together to look at our work and say whether they think we did it properly or not and to change it if they think that needs to be done. It will be like a big drafting committee which will draft this constitution. We must have the right people for that job, people who can speak for you and who will ensure that your thinking is presented to the meetings of that big committee.

These people will argue out all the bits and pieces. There will be lots of arguments. You may think that something should go in but the people from Alice Springs may disagree. People will have to argue it out and explain to others why some things are important to them and also understand the problems of others. Between you, you will start to work out how you can fix up each other's problems and determine a way to go. It will take a long time but, when they have finished that job, the people will have to vote yes or no in a referendum. If the people are still not really happy with it, they will vote no and the work will have to start again. We will have to keep on working until we get something for which the people can vote yes.

It will not be a quick job. It will take 3 years or 5 years or perhaps even longer. However, we must do it properly and we have to start some time. It will be a long road to get this job done. All we are doing now is taking the first step of telling people that it needs to be done and asking them to start thinking about it and become really involved in it. People must have their say and ensure that their interests are properly looked after in this constitution. The people must do this for themselves and for the future generations of Territorians, their children, grandchildren and great grandchildren and make a place for them where they can have a better life. That is the job that we have come to talk about.

Would you like to say something, Wesley?

Mr LANHUPUY: (Wangurri and Djambarrpuynu languages)

I have to thank you all for coming here to this meeting when it's during a funeral ceremony. Thank you for giving us the time to talk to you during this gathering.

Steve has already told you that we have two main political parties in the Northern Territory. They are the CLP and the ALP, and we both parties are working together on this committee to develop a paper called a constitution. We are doing this because we believe that everybody wants the Northern Territory to develop a

paper like the constitution because we want to live the lives we choose here in the Northern Territory and have a constitution for the foundations of our law.

All of the other states have a constitution. We are the only ones that Canberra is still holding onto tightly. Western Australia, South Australia, Tasmania, Victoria, New South Wales and Queensland already have their own constitution. We are the last people, the Northern Territorians, to let us try it like the other states.

We are grown-up now and we know how to handle our jobs. We are running our own public services, law system, essential services, transport and works and other responsibilities. We are handling all of them.

What we are saying to Canberra is give us the power so we can stand alone. Canberra has control over many areas such as uranium mining and National Parks like Kakadu and Uluru. The Northern Territory is dissatisfied. We want control of these areas for ourselves. We want the laws to be ours. We want to be released from Canberra's power and we want our own power to control our own laws. This is what the Northern Territory is wanting to do, and we want our laws to go into a constitution.

These laws will then be above politician's control because they will be laws decided by Yolgnu people, Yolgnu laws. We politicians won't be able fool around with it, not even the legislation, nothing, because the power will be for you Yolgnu people. It will become a Yolgnu power in the constitution.

If you want your land rights put into this constitution to become strong then we can do it by putting it into the constitution. At the moment our land rights are clinging onto an act of parliament.

If the Liberal Government or the Labor Party wanted to come in and change the laws, they could easily change them. If we put our land rights into a constitution then land rights would be stronger. Not even we politicians would be able to play around with it.

The only way to change those laws when they are in a constitution is by a vote of the people. It is for this reason that this committee is here today. You can see our pictures in this booklet here.

Let's start talking. Let's look at this law and how this law will treat us Northern Territory people. We need to start asking questions like how many parliamentarians (candidates) will we elect for our parliament? Will they recognise our land rights? Will they make special concessions for land rights? Will this law be good for our land rights because we are forty thousand Yolgnu people here.

Let's make laws for the Northern Territory, laws for the education system and bilingualism.

Let's all bring it forward, put our thoughts and laws into this constitution so that later when you come to arguing, you know what you're arguing for. Your power will be strong with a constitution and if anything goes wrong later you will have your rights and laws written down for you to argue for.

The Federal Government already has a Constitution, for all Australians. The new constitution law will be like this. For example, mari, Gaymuniny, has been staying in Galiwinku for a long time and he's getting tired, and he says to himself, "I want to go and stay at my outstation, so I can work for myself and start to establish my home. I'll plan to do the best I can for myself, and then I can get money funded directly to me to manage everything on my own."

That's how it will be to change from a Federal Constitution to a State Constitution. Some of us are going through this process already. Last time we Yolgnu said to Canberra (can't hear), "It's been long enough that you've been holding onto our arms, leading us in your ways and offering money to us. It's about time we changed. We want to be independent people." Let's say this to them.

Before we ask to become a state, that'll be in the

future, let's go through this process of constitutional development first. That's why we are visiting you. Steve has already told you this.

We are visiting sixty communities starting at Finke, Kintore, Yarralin and other communities. We are visiting many communities because we believe without full consultation with Yolgnu people and without sharing our views, our laws will not be good.

If we want this constitution to work everyone will have to bring their arguments out into the open - all of our dissatisfactions, bring everything into the open. Throw it open for discussion and for the committee to look at.

This committee is very important, that's why I decided to go on it. I saw the need to look at what Yolgnu people want from this constitution. Yolgnu people need a person like me to speak on their behalf. Canberra might sometimes say, "Do we trust the Northern Territory to give them this power?" Will Canberra give in in the end and give us this power? Are they ever going to loosen the strings they have tied to us or will they continue to hold onto us?"

By asking for this paper we are asking Canberra to give us the power because we already know how to run our own service systems (can't hear). We are running the police and the Education Department. We are doing all of this. We pay the taxes. This power we are arguing for belongs to us. Canberra are looking at us and saying, "You're still not good enough - you're still not ready but keep trying".

Both the Country Liberal and us mob, the ALP, are working together on this constitutional development - all working as one team. When we are not together on this committee we're arguing about many other policies. We are always arguing

about our differences. The CLP are always disagreeing with us and I sometimes do the same to them.

At the moment we're unified working on this committee. We're asking the people or the Northern Territory. We're saying, "Here look at this and learn". If you've got a problem then give us your views share it with us so we'll all look at it. This is what all of this means. In what way should we have this constitution for the Northern Territory and how will it be when our children are grown-ups? Will we still be fighting over our land rights or shall we be given recognition for our land? Do we have to continue arguing on land management, land matters and other issues?

These are the main reasons we're visiting you and getting all of your views, so that next time when you think of something to say you know we'll be available to come back for a big community meeting or smaller group meetings. Myself and our Executive Officer, Rick, over there, can come back.

This is our lawyer, Graham Nicholson. He wrote the paper that you're looking at and the story in this paper has been broken into small English words. If you want to look into this paper which contains a more difficult English, then you have to get one of these books. Basically from this little paper comes the bigger one, and here they are. This book here is for the lawyers. They will debate about this one.

This is the first stage of the process - going around and informing people. The second stage is the big meeting (the Constitutional Convention) which will be for Yolgnu, Balanda, halfcastes, Chinese and other people. We will all look at this paper (draft constitution) and then you Yolgnu people and others will have to decide how you want to record your decisions and truths.

Let's all put our ideas and laws into this constitution so that later, if anything goes wrong, you will have your laws and rights written down to argue for.

Mr DAYNGUMBU: (Wangurri language)

Can I ask one question? Is there a constitution looking after us in Canberra at the moment?

Mr LANHUPUY: (Djambarrpuyngu and Wangurri)

Canberra belongs to us the Commonwealth ... Self-Government Act. At the moment we (the NT) have a Self Government Act. Every other state has got a constitution. They all have become states and they all have got State Constitutions.

We are the only ones that don't have a constitution, us Northern Territorians. Back in 1978 they (Canberra) gave us the Self Government Act.

With that we are currently exercising power and authority by providing services throughout the Northern Territory.

Mr HATTON: States are guaranteed by the Australian Constitution. In the NT we don't have that guarantee.

Mr LANHUPUY:

Sometimes they (Canberra) create problems for us, it's bad for Us, and doesn't do us any good. They can take our power away from us any time they want to because we don't have a constitution to protect our land rights.

Unknown: Special funding (inaudible).

Mr LANHUPUY:

We can't change, because we're still receiving Federal funding. The same sharing of funding between Federal and other states is going on in all of the other states. We don't get a large amount and we don't get a small amount.

(Can't hear discussion)

Mr HATTON: Each state gets about 60% of its money from Canberra.

Mr LANHUPUY:

The Northern Territory should receive the same level of funding as the other states.

Mr DAYNGUMBU:

Are you talking about power?

Mr LANHUPUY:

We are asking for our responsibilities. We are asking the Federal Government saying, "We want our power. We are already providing our own services, the law, industry. We want to extend the public services through acts of parliament." We should think seriously first before we ask for our responsibilities and tell them to stop holding onto us. Let's say that, but think first.

(Can't hear question)

Mr LANHUPUY:

The reason? The reason we're saying this is look at this for an example. The Galiwinku Council stopped operating the Resource Centre and now the Resource Centre is running on its own, it's not under the Council anymore. This is what we are asking Canberra for. This is what it means for us to go forward on our own.

Now, whenever the Resource Centre wants to borrow money from DAA, they don't have to go through the Council.

Unknown: That's all in one, that's all in one.

Mr LANHUPUY:

In what way?

(Can't hear comment)

Mr LANHUPUY:

... part of it. At the moment we're only operating part of it. It's through acts of parliament that we are responsible in the same way the Council have by-laws. Council make rules like one or two dogs is enough for each family. I'll give you one example Brian Ede gave when we were in the Centre, and it goes like this. If you don't like a fierce bully dog, tie him around the neck and tie him to a tree, in that way he can't get loose, he will have to go around and around that tree for the rest of his life. This is what we are like, going around in one spot. We've got no freedom to run free and do things by ourselves. You see this. (can't hear) It's like this.

Mr GURWANAWUY:

For example, especially if someone put a curse on the store we don't do anything because our law prevents us from doing anything. This law is like that for us. If someone put a curse on the store we should lock him up. We never put that into action. Is there a law in the constitution to cover that?

Mr LANHUPUY:

The constitution will protect your rights, your religion, exercise your freedom and so on.

Unknown:

... strings, but it's still controlling us, isn't it, muka?

Mr LANHUPUY:

At the moment what we are holding onto is ... (can't hear) ... we're tied by strings. We don't have that ... (can't hear). The Northern Territory doesn't have a constitution to protect our rights.

Mr DAYNGUMBU: (Wangurri language)

I know that myself.

(Can't hear comments)

Mr LANHUPUY: (Wangurri language)

We only take money from them. That's how they look at us. It's like we're always depending on the government for money.

Everybody:

Outstation (can't hear) NT outstations

(Can't hear discussion)

Mr GARDHUWUY: Firstly, my question is whether there is still a chance to make a proposal for the draft of this document or will we only make changes in this?

Mr HATTON: We have not even written anything yet. These books, in particular this one, give lots of different ideas. I will give you an example. It asks whether you want 1 or 2 Houses for your parliament. Do you want 1 House as we have now or a set-up like Canberra where there is the Senate and the House of Representatives, an Upper and Lower House? When you have an Upper and Lower House, that is called a bicameral system. When there is only 1 House, like the present Legislative Assembly, that is called a unicameral system. That is 1 question: do you want 2 Houses or 1 House? This book gives the good and bad points of both systems. What you have to do is think about it and tell us what you think.

We are only putting different ideas down here. We have not started to write it up. All right? This is the very first step. We are asking you to start thinking about it. I am not even going to tell you all that I think. I want you to tell me what you think. After we have heard from all over the Territory, our job will be to try to put that together. However, that will only be an idea. We are not going to write this. You have got to write this one, not us. We are just here to get you thinking and talking with other people. That is why we have to form that big committee, which is called a constitutional convention, because they are the people who will do the writing. That may take 3 or 5 years. They will have to meet time and time again. There are some people in Darwin and Alice Springs who do not like land rights. You will say that you want land rights in this law so that the government cannot touch them and those people will say that they are not sure about that. You will have to talk and explain it so that they understand why land rights are so important. The way we go about making people talk to each other about their problems so that they understand one another is as important as the end result. Isn't that so?

Mr LANHUPUY:

One example is if want we can put our land rights into this constitution. We will argue and others will say, "But our land rights have already been recognised through an act of parliament", but we have to put it in the constitution so they will become permanent, so we the politicians can't change it.

Mr K DJINIYINI:

Two parties.

Mr LANHUPUY:

Two parties, and they have election after election after election and whoever wins then the changes will be put down, and the paper will be returned to you mob to Yolgnu people. The Northern Territory population will be the only ones who can change it.

Mr HATTON: We have just got a lot of ideas now. We spent 3 years just getting a few ideas together and now we are saying: 'Have a look at some of these ideas. There might be things that we have not thought of and that you will think of'. When we come back later this year or next year, you can tell us what you think. If you cannot understand this material, there is a telephone number on which you can ring us free of charge. We will get Wesley or myself or Mr Nicholson or someone to come out and talk to you about whatever you do not understand. You can ask questions and find out what these different things mean. Then, you can go away and have a think about it. That is really important. We want to give you time to think and make up your mind so that you can ensure that you have your say and look after the things that are important to you.

Mr MALAWA:

When's the big meeting? When is our big meeting?

Mr GURWANAWUY:

When is this very big meeting?

(Discussion inaudible)

Mr DAYNGUMBU:

This is the first step, we've been told already. They just told us the story and now we have to think about it and discuss it amongst ourselves and then the committee will come back to us and a lot of questions will arise during their next visit, if they come back.

Mr GURWANAWUY:

I just told you that.

Mr LANHUPUY:

And if you want us to come back I will have to talk again to make sure you know enough about it.

Mr DANATANA:

That's good enough, but there's lots ...

Mr LANHUPUY:

We'll leave it up to you mob.

Mr DANGATANGA:

(Can't hear) we have some important ...

Mr LANHUPUY:

Yes, if the community ...

Mr DANGATANGA: Community and the people.

Unknown:

(Can't hear) Northern Territory - black and white

(Discussion inaudible)

Mr MAWUNYDJIL:

It's good for Lanhupuy to be telling us this story, the full story, because sometimes we're not sure what is going on and we argue a lot with the Darwin mob and they argue with the Canberra mob.

Unknown:

Yes.

(Discussion inaudible)

Mr MAWUNYDJIL: Ga (and) then we have to argue with them again.

.....

It's better if ...

Mr MALAWA:

... it's like this

Mr MAWUNYDJIL: We talk together, sharing the ideas, supporting and helping.

Mr DJINIYINI:

Often we ask ADC or ABTA for loans to give us good homes but it s not enough, we don't get any support from this council or from funding bodies. They just can't make their decisions (about funding)

Mr MALAWA: My question was the power, you know, we get a lot of Federal funding.

Mr HATTON: There are 2 questions there. I think there are 2 important differences. You are thinking about when we become a state, right? One day - it might be in 5 or 10 or 20 years time - we will become a state. But, how we do that is another question. Before you can even think about becoming a state, you must know what you want. Therefore, you have to do this job and, when you have finished this job, you can then ask whether you wish to become a state and, if so, when. Then, you can ask questions about the transfer of powers from Canberra to the Northern Territory. You do not even know what you want until you have written this.

You know that people come to talk to you about community government. You do not have community government here, do you? No. But, if you were going to introduce it, you would have to sit down for a long time and work out how you want it to work. You would have to write a constitution probably. After you have written a constitution, you would have a look at it and say: 'Yes. That is what I want'. Then, you would think about becoming a community government. The same thing applies with the Northern Territory. Until you write that constitution which indicates where you want to go and how you want it to work, you cannot even start to talk about being a state.

Mr LANHUPUY:

That's why, mari, if you don't trust us, the politicians, then put your laws in this constitution, and we won't fool around with them.

Mr HATTON: If you do not trust the government, you do not trust the politicians, you put it there so they cannot touch it. This is where you make the law over the top of the government and you say, 'Government. This is too important. You leave that alone'.

Mr LANHUPUY:

Unless you play around with it and make the changes yourself ...

.....

Understand this?

Mr HATTON: Which is why you have got to sit down and you have to talk and when there is going to be fights like that at the start, you talk and talk and talk and talk until you work out a way to go.

Mr GANDHUWUY:

Wesley, tell us about the constitution. Is this constitution law strong? Is it true?

Unknown: Because some of us are a little bit frightened by ...

Mr LANHUPUY:

I will have to ask this lawyer, Graham, the difference between a constitution and an act, please.

Mr NICHOLSON: There is a constitution for the whole of Australia, right? That is the law that binds everybody, including the parliament. The only way that you can change that law is by having a referendum in which everybody votes. It is the same for the Northern Territory. If you have a constitution for the Northern Territory, it is the law that binds everybody in the Northern Territory including the Northern Territory government and parliament. As this green book says, the only way to change that constitution is by a vote of everybody in the Northern Territory. An ordinary act of parliament, whether it is a Commonwealth or a Northern Territory act, can be changed by the parliament itself.

Mr HATTON: You do not have to ask the people.

Mr NICHOLSON: It does not have to go to a vote of all the people.

Mr DAJANNANGA: But you still change the law?

Mr LANHUPUY:

With the legislation that they've got at the moment, we've got the right to change any laws anytime, the politicians.

Mr DATJARRANGA: What do the people, the community say?

Mr LANHUPUY:

If the Labor Party look at some laws and say "This is good, we have to change this law". According to our current law we can change any laws anytime.

Mr DATJARRANGA:

Today, now.

Mr LANHUPUY:

Yes, today's law.

Mr DATJARRANGA:

Is that how it is today? This man (Steve) told us the Balanda's law is always changing.

Mr HATTON: But, with this constitutional law, the government cannot change it. Only the people can change it.

Mr NICHOLSON: And the courts will enforce the constitution to make sure the government does obey the constitution.

Mr HATTON: If the government goes outside that, you can take it to court.

Mr LANHUPUY:

With the people's law, people's power in the constitution, the parliamentary people won't do anything with it, not any of that mob, not even in the parliament.

Mr DATJARRANGA: Cannot even change the law.

Mr LANHUPUY:

But at the moment with acts of parliament we can change it.

Mr HATTON: That is where the people put something over the top of the politicians and say: 'We do what we tell you'.

Mr DATJARRANGA:

(not clear) - all community like this. This is just an idea, for example.

Mr LANHUPUY:

If you want, over at Milingimbi they talked about this, they have a land council over there, and they have different views on this. We've got different views. Whoever wants us to come back, we'll all come back together and we'll deal this matter when you'll be listening. It's okay, we're available to do that.

(Can't hear)

Mr LANHUPUY:

We will not go behind your backs and tell you stories. Were here for you to think about this and tell us what you think, give us your opinion. If its too late don't get mad please.

Mr DJIRIMBILPILWUY: We are getting 2 different ideas. What I was going to say is that we should have a look. This is just something that government is talking about so that all the people in the Territory can have a look at it and then decide for themselves how it will affect families in the Northern Territory in the long run. We have to look at it because we are not going to talk about something that is going to happen in 3 years time. Whatever is going to be put in is something that the people in the Territory will think about and discuss. It is important that whatever goes in it cannot be changed. Anything that is not included will have to be included. We will have to talk about some things that are not in there and which should be included. Like you say, we have got to ... (Indecipherable) I think that is the most important thing that has to be spelt out clearly to the people. We don't want to be talking about it here ... and someone else somewhere else.

Mr LANHUPUY:

This is what it is like for us Yolgnu. We've got land rights and our land rights uphold our customs, our ceremonies, our laws, our sacred sites, all of our cultural beliefs. Our land rights protect all of these things. We don't have that kind of land right legislation for all Northern Territorians such as Balanda, Chinese, and whoever else is living here. For Yolgnu we have land rights.

Mr MALAWA:

For the what?

Mr LANHUPUY:

Lots of other, mari, we don't want to argue.

Mr DJALANGGI:

Mori, one thing, it looks like we are learning, then later on we might come up with one strong voice, us, these mob.

Mr LANHUPUY:

It's like this, the main thing is the paper. We've got it for you to have a look at it, and later we'll have a meeting on the constitution that it will be for us. Get yourselves prepared for us and really look into this, then make yourself aware of what is going on. Then if you want to know more, we will come to see you. As you know I stick around here, and you never ask me about these things, you just ignore me, you can come and ask me anytime about this paper.

If you want to speak to this Balanda lawyer, you come and see him anytime, he's available.

Mr DJIRRIMBILPILWUY:

Another thing is (can't hear) we have to do some thinking about this one and come up with ideas, questions and answers. (continues in English) We don't want to rush it. We don't want to rush it. We want to take time. We don't want to have to talk about it now or next week. Take time, a lot of people will want to know about it.

(Can't hear)

Mr LANHUPUY:

That's functional, right. Let us all look at this very carefully. At the moment we are asking the Board. "Give us our responsibilities, we'll look after them ourselves". And let's leave our discontentedness and other things behind. We'll look at them later.

(Discussion inaudible)

Mr LANHUPUY:

We will come up with certain points that we want to debate when we come face to face at the big conference. You will see different people. There will be lawyers, women's rights, environmentalists, Yolgnu people and pastoralists etc.

Mr MALAWA: Health, Education.

Mr LANHUPUY:

Yes, during the big conference there you will see educationalists, health workers, doctors, anybody who is interested in doing something. It's big this, asking for a constitution. We will all have our own separate interests, pastoralists, land rights, mining and others.

Mr DANGATANGA:

It is okay for areas like that but then later, what are we going to do with our customs and all of our other traditional Yolgnu business and belief systems.

(Discussion inaudible)

Mr LANHUPUY:

We are talking about the one thing for the constitution. There are a lot of people who are interested in those things for the constitution. What are your concerns about? Land rights, mining, sea rights, and others? We'll be looking at those and other Yolgnu business later.

Mr GANDHUWUY:

Power?

Mr DATJARRANGA:

We have to talk about this again.

Mr GANDHUWUY:

Are we going to get that power to run all of that ourselves?

Mr LANHUPUY:

It's like this, for example, this man Djilipa, he didn't want to stay here and work for the council. He went away and stayed at Gitan (outstation). He said to himself, "I'll stay here and work for myself, I'll get the water running", and other things which he planned to do. This is how it is. He was frustrated working with the

council. He wanted to work by himself, on his own. He stayed at his outstation on his own with his family. This is what it really means.

Mr MALAWA:

The best thing is to get more information.

Mr DJINIYINI:

He just had to tell us this, but it's our decision.

Mr LANHUPUY:

I've just told you that and we will leave it to you mob.

Mr DJINIYINI:

And if anything goes wrong we will have to call Steve and Lanhupuy any time. Just get the phone, get the council if you're not sure, as Steve said. That is it. We have to talk about this, it's your decision whether we want it or not. It sounds like we are a mutika (motor car) with no engine, a vehicle with no engines that's what we all have said. (continues in English) We want that Canberra to put a engine in the truck.

Mr HATTON: Can I just say one thing. A constitution is not a thing to be frightened of. The constitution cannot take anything away from you. It can only give you rights. Okay? It cannot take rights away from you. It can only give you rights. What a constitution does is put limits on government from the people so that, in that way, it gives you rights. If you do not have a constitution, the government can do what it likes. That is the way you protect your rights and stop the government from mucking around with them. Therefore, it is a way for you to get rights that governments cannot touch. They cannot take any rights away from you. If you do not have that constitution, you have no guarantee of any rights.

Mr GANDHUWUY:

I have a question to ask, Wesley, what's the Federal's capacity to override the state in the constitution?

Mr HATTON: Well, you have the states and the Northern Territory. They are different. What we are talking about is that, one day, we should be on the same level as the states. The Australian Constitution lists all the things that the federal government can do and everything else belongs to the states. It divides up the jobs for a separation of powers.

There are some things that only the federal government can do and there are some things that both the federal government and a state government can do. Those are called concurrent powers because they can both exercise them. Where they are both allowed to exercise the same power, then the federal power sits on top of the state one. All right? But, the constitution sets out what the federal government can do and what a state government can do. It also sets out other

rights for people who live in the states. For example, if you live in a state, the federal government cannot just take your property. If it needs some property for Commonwealth purposes, it has to buy it. It does not have to do that in the Territory because we are not a state.

Mr DAJANNANGA: But, land rights is doing that already.

Mr HATTON: No, it is not in the constitution. The Land Rights Act is an act of parliament. You must remember that what governments can give, governments can take away. But, what the constitution gives, the government cannot touch. That is the difference.

Mr DAJANNANGA: What you are really saying is that the land rights will be looked after by the Northern Territory.

Mr HATTON: Well if that happens, yes. You might say: 'I do not trust this Northern Territory government with land rights. Everybody keeps telling me that, if we become a state and the Northern Territory government gets the Land Rights Act, it will take all our land from us'. That is what people are telling you, isn't it? That is absolutely untrue but, if you do not trust us, you can put it in the constitution so that we cannot touch it.

Mr MALAWA: What's the (can't hear) in the constitution?

Mr DJINIYINI:

Let's put all of our laws to become one strong law. For example, (can't hear), Wakupulu, (relationship term to a group of people in one clan) these mob they argue with the council all of the time for money. This is a clear picture for you to see. They argue with us the Council, but they don't have any power without a law. They never look into the law to make it clear and we never say anything back to them. Alright? So I invited Galarrwuy to come, I said, "Galarrwuy, I want you to come over here". I asked the lawyer to come too, and I said to the lawyer, "Please, I want you to make a law for these people because they're not getting money for the Barge landing lease". So he came last week. Then these people wrote a letter saying, "We want this, this, and this. We would like you to do all of this for us". Galarrwuy said, "I have to go and come back some time, and I'll ask the lawyer to look at your letter".

Mr LANHUPUY:

That's not it, but it's something else to think about.

Mr DJINIYINI:

Anytime people come and they always argue with the council. At the moment we are controlled by strings,

Canberra tax strings, Northern Territory tax strings to Canberra. They can take power away from us. We have got no power, they can take it any time because we

have got no constitution. Let's not make this to look like an argument. They are just presenting us with this to make us aware. What is the name for this proposal?

Mr MAWUNYDJIL:

It's like giving us an explanation.

Mr DJILIPA:

Let's all listen to this story.

Mr MAWUNYDJIL: Because long time ago people just come, they tell and they go. But now they are showing us the proposal. We study it, read it, talk about it, call people to come and say, we want this, this, and this law that nobody can broke (break), law.

(Can't hear)

Mr LANHUPUY:

That sounds okay (mori), because that's the reason why.

Mr DJINIYINI:

That's alright, but let's not make this to look like we have to quarrel. The fight will begin later. I reckon we will not talk about this any more. After we have looked into this matter we will have to sort things out.

Mr DJILIPA:

This is just a local community meeting. (can't hear)

Mr LANHUPUY:

Over at the idea centre they have got this kind of paper, nearly every one of us have that kind of paper (constitution?). It looks like we are going well with that. Plans and paper. Everything is governed by the holding of bits of paper. (can't understand)

Mr GANDHUWUY:

So let us all try and chase up these laws. Let's not stay unnoticed all of the time. This is what this paper is here for. These two have told us now and let us all begin to do the work together, don't leave one person to do all of these things. That's not good, not fair.

Mr LANHUPUY:

It was through this process that New Guinea became independent, but first they had to go through this law. Before New Guinea was under Australia, Australia

looked after New Guinea, then they became independent. This is what we are trying to be. We have to go through this law and have a constitution before independence.

Mr GANDHUWUY:

Okay, you must do something for us.

Mr LANHUPUY:

Yes, OK.

Mr GANDHUWUY:

Let's not get lazy, let's get on with it, let's not waste time. Let's keep up our participation with this one so that later we won't get surprised.

Mr LANHUPUY: (Inaudible)

Mr GANDHUWUY:

Those papers on Town Clerks and other important jobs.

Mr LANHUPUY:

We only look into what they are arguing about, and the legislation is not ours.

Mr GANDHUWUY:

If they do that, we have to do the same as what New Guinea did. Their problem was ...

Mr LANHUPUY:

We will have our problems but we are asking for this main thing. We must put our laws in a constitution first, before we continue to argue. We cannot get away from this, even our Land Rights Act which is a central issue. Our laws have to be (Inaudible)

Mr GANDHUWUY:

Understood. (can't hear). I'll come back to that later.

Mr LANHUPUY:

Here is the paper we will (can't hear) others for them mob.

Mr GANDHUWUY:

We will just have to see to that.

Mr DJALANGGI:

It is not time for a referendum, or you might say it is. They have to introduce it to the Council and there is a lot to think about. We cannot do it in just one year.

Mr HATTON: We have come here today to tell you what we have to do. We will go away and give you plenty of time to think about it. I am not asking you to tell us now what you want. We are here simply to tell you that we have to do this job and to ask you to start thinking about it. We will come back later when you are ready.

Mr LANHUPUY:

We talk only for a while and then our head spins. For me, I am the one who sits and listen to their (Balanda) arguments, which makes me feel heavy. (can't hear)

Mr HATTON: Talk to all the communities. You will have to be talking to the people from down in the desert country and to people in VRD, Daly River, Darwin, Alice Springs - everywhere. They all have different ideas.

Mr LANHUPUY:

Let's close this meeting, right?

Mr DJINIYINI: I think everybody understands what you have come out here to tell the council. On behalf of the council, I once again thank you and your team for coming out here to talk about this. The council will talk about it and find the time to have a community meeting. We appreciate your talking to us. Thank you very much.

Mr HATTON: Thank you very much.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

NHULUNBUY — Monday 8 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms Marian MAURER
Mr Syd STIRLING
Mr Frank FARLEY
Mr Greg SMITH
Mr Tony McMICHAEL
Mr Adrian WEIKE
Mr Dave PERMEZEL

NOTE: This is a verbatim transcript that has been tape-checked.
ISSUED: 4 October 1989.

Mr HATTON: Thank you for coming along tonight. Let me introduce myself and my committee. My name is Steve Hatton. I am the member for Nightcliff but I am here tonight as Chairman of the Northern Territory Legislative Assembly's Select Committee on Constitutional Development. I have with me Dan Leo, who I am sure you all know as the member for Nhulunbuy, who is also a member of our committee. Rick Setter, the member for Jingili, is also a member of the committee. At the back of the publication that you received, you will see the photographs of all 6 members of this committee.

This committee is unique in the Northern Territory parliament and probably in parliaments in the Westminster system in that it is a genuinely bipartisan committee which has equal representation from both the government and opposition sides of parliament. For obvious reasons, most committees of the parliament have a majority of government representatives. However, in this committee, both the Labour Party and the Country Liberal Party, the major political parties, have worked consistently together towards a common objective. We have worked very hard to avoid this process being caught up in party political games. That, in itself, is unusual in politics. We are doing that because we believe that the job that we have to do is more important than the day-to-day party political process. We have sought to keep this issue outside of our respective campaigns to maintain government or defeat the government from time to time.

Our job fundamentally is to work towards the writing of a constitution for the Northern Territory. Over the last 2 months, we have been visiting some 60 communities around the Territory to explain what we are doing and why it is very important for people to become actively and directly involved in this process. You must ensure that, in the writing of this constitution, you have your say and that what is important to you is taken into account.

I would like to introduce it tonight by giving a little of the background. In the absence of a written constitution, governments are all powerful. Some countries, Britain among them, do not have a written constitution. In such a country, the government can pass any law or take any action that it is able to have passed through the parliament. There are no limitations on the power of government or the power of the parliament because there is no constitution to create those limits. A number of nations have sought to impose limitations on the parliamentary government process. These limitations are imposed by the people. In a true democracy, the people should be the ultimate source of power and, in what we call a constitutional democracy, the people actually set the limits of power of the government. If there is no constitution, there is no limit to the power of government. That is the first important thing to learn. A constitution does not limit the people; it limits what governments can do. It says what governments can do and what governments cannot do. It is also the vehicle through which the people determine how they want their democratic process to work.

There are 3 elements to government: the legislature, the judiciary and the executive. The executive is the head of state. In our society, that is the Royal Family which is represented by the Governor-General and the Governors or the Administrator. The legislature is the parliament and the judiciary is the court system. All 3 elements comprise the process of government. How do you think that should work? How should you go about electing a parliament? Who should have the right to vote? Who should have the right to stand for parliament? How long should parliaments be able to sit before they have to go back for re-election? Do you think there should be fixed-term parliaments?

What should the parliament be allowed to do? Are there certain laws that you think the parliament should not be allowed to make? For example, should the parliament be able to restrict your religious practice? Should it be able to restrict your right to meet and discuss matters or your freedom of speech? Should parliaments be able to interfere with your privacy? If you think that there are some things that are so absolutely basic to your life and rights as a citizen that no government should have the right to interfere with them, how do you ensure that it cannot interfere? The answer is that you write those in a constitution. That sits over the top of the government and becomes the framework within which the parliament and the government must work.

There are questions of which we in Australia would be well aware. Do you think, for example, that the Governor should have the ability to sack the government? Do you think there should be a repeat of the Whitlam-type dismissal and, if so, under what situations? If you think that there should be some controls on that, some rules set down, where are you going to write them? You write them in a constitution. If you think the government is acting outside its power, how do you obtain redress? What gives the courts the power to tell the parliament that it acting beyond its power? How do you protect your rights through the court system? Where do you give the courts the power, in certain respects, in relation to the parliament? Again, the answer is that you do that in a constitution.

What we are saying is that you should write the rules relating to how you think your society should operate, how people should deal with other people, how the law makers should act, what the limits are on the power of the law makers, the limits or the roles of the courts and how that comes together. It is a horrible and frightening thing. You might say: 'My God, I cannot think of all those concepts'. However, you can if you take one little piece at a time. You can work through it and decide what you think is important. For example, I think it is important to have a unicameral system, one House of parliament, rather than having an Upper House and a Lower House. Somebody else might disagree with that. How should the matter be decided? Do you think the community should decide or should the decision be left to a few politicians? These are your institutions. They are not ours. The courts and the parliament belong to the people and the people must make those laws and determine the direction in which they want their society to go. You cannot leave those decisions to a group of politicians or lawyers or academics because, once a constitution is set in place, it is very hard to change it. That is why it must reflect the views of the people. Only the people should have the right to change that law. Through the constitution, the people have the power, not the parliament.

Our job as a committee is to start the community thinking about producing a constitution which sets down how the parliament and the courts should operate, how we should relate to other people and what rights are so sacred that they should not be interfered with by anybody in government. You set those in place and create a future for the people of the Northern Territory. That is our job. That is the task before us. It is a unique opportunity in Australian history. It has not been done for 100 years. 100 years ago, the people were not asked. The politicians framed those old colonial constitutions. They did not even consult the people when they were formulating the Australian Constitution. For the first time in our history, a populace is being asked how it wants its society to run and how the rules should be written.

You can say: 'That is all very fine, but why do we need them? We are getting on all right. How is it going to affect us anyway?' It is very easy to say that. We are plugging along with our ups and downs. If we get a good run from the federal government, things kick on a bit. We have our

own parliament in Darwin and a few decisions could be made there. Many people in Nhulunbuy would think that is a bit irrelevant to them because this is a mining town and the influence of the whole mining community is sitting over the top of them.

You might ask what it all means to you. As a society, what do you want? What do you think you want as a society? Do you want the Northern Territory to keep going exactly as it is now? Do you think it can be improved? Do you think there are some rights that you do not have and that you think you should have? How are you going to get them? You have to reach out and take them. Those things can be achieved only if the people want them and demand them. This is a vehicle to do that. We all have an obligation to future generations of Territorians to do this and to do it properly. We must not put it aside because it is too hard or because we would rather go to a basketball game or watch Dallas on the television. What sort of place are we going to leave for our children or grandchildren? Or do you want to ignore their future? If you can accept the responsibility and the opportunity that is given to you now, you will start talking about this among your community, get your ideas together and ensure that you participate to developing a constitution in the Northern Territory which we are proud to hand on to future generations and of which they too can be proud.

That is a daunting task but it will not happen quickly. It is a task that we must take up. If we walk away from it, the problems will not go away. They will be exacerbated and some future generation will have to do it. It will become harder and harder. The responsibility is here now for us to start to think about this and to come to terms with the reality of the Northern Territory society. How are we to resolve the quite serious conflicts between Aboriginal and non-Aboriginal society? How are we going to create a society in the future where cultures and races can live together side by side in true equality and mutual respect? Those are issues that we must deal with because they are issues which will affect our children. Do you want to ignore that and leave the problem to fester for the future? Or are you prepared to take up the challenge of addressing those problems? That is the process that we are talking about today.

You must understand that every state and the federal government have constitutions. They might be small, relatively ineffectual or quite comprehensive, but they are there. The Northern Territory has no constitution. Because you live in the Northern Territory, you do not have any of the individual or community protections that flow from the Australian Constitution. That constitution refers to a federation of states and the rights flow down to the citizens of the states. We are outside that. Your right to vote for a government in the Northern Territory arises from a federal act of parliament and the functions of the Northern Territory government arise from regulations under a federal act of parliament. I am not suggesting that it would happen, but the reality is that the federal government has the power, for example, to wipe out the entire Northern Territory education system simply by amending a regulation. That would not even have to be debated on the floor of the House. There is nothing that we could do about that. By repealing an act of parliament, it could remove any form of government whatsoever in the Northern Territory and we could revert immediately to the sort of direct Canberra control that existed before 1978. We have no protection against that. The states have a constitutional guarantee against such a thing happening.

You have the right to elect a member of the House of Representatives in the federal parliament. From the 1920s - when we first had a member in the federal parliament - until 1968, that member was not permitted to speak in the federal parliament except on matters relating to the

Northern Territory and he was not allowed to vote. By amending an act, the federal government can remove the right for a Territory federal member to speak or vote. The reason for that is that we have no constitutional protection. The only reference in the Australian Constitution to the Northern Territory is in section 122 which basically says that the federal government can do what it likes with us.

If you own property in the Territory, you might be interested to know that the federal government has the power to acquire property from you and is not required to pay any compensation to you. It can take it from you without compensation. That has been upheld in the High Court of Australia because the constitutional guarantees for citizens of Australia do not apply here. If you want the rights that you would have if you crossed the border into Queensland, you will start becoming involved in this program. You will start to work towards obtaining a constitutional basis for the Northern Territory for yourselves and for your children. That is why I am so patient about this. People say to me that this is a very esoteric argument and ask me who really cares anyway. I care. I care about the sort of society in which my kids and their kids will have to grow up. As a parent, I feel that I have a responsibility to do what I can to create a society for them that is better than the one in which I have grown up or live in. If I have the opportunity to do that, I will do it. I am trying to convince other parents and other adults to take on the same responsibility, and write a law for the Northern Territory that gives us the basis from which to start work.

In what I have been saying, you will notice that I have not mentioned statehood at all even though it has been a matter of debate in the community. There are people who are fervently in favour of statehood and there are others who do not believe that we are ready for it. Some people are very nervous about the thought of statehood. I can say categorically that we cannot even consider the question of statehood at the moment and I am known as an advocate of statehood. We cannot do that because, as a community, we do not know what we want. We will not know what we want until we have written a constitution. After we have done that job, then we can ask when we want to become a state because we will then at least know what it will mean. But, without that rule book, without those guidelines that have been written by the people, we will not know where we are going or what we will walk into. Thus, the question of whether you are for or against statehood is one for the future. However, I ask you to accept that, one day, whether it is next year or in 5 or 20 years time, the Northern Territory will become a state and will take its place on the basis of equality with the existing states. Let us take the opportunity now to start to write the rules in relation to the sort of a place we want the Northern Territory to be in the future. Don't let us do that job for you. It is too important for that. You must do that job, along with the people in Docker River, Alice Springs, Darwin, the Tiwi islands and everywhere else in the Territory. It is just as important for them as it is for you.

How do we intend to go about this job? At the moment, we are visiting the various communities and telling the people that this is the task ahead of us. We are asking them to read the material and to think about the issues. If you need extra information, there is a toll free telephone which you can ring. We can arrange for somebody to come and discuss individual aspects with you if you so desire. Later this year or early next year, the committee will come back and you can tell us your views on the various issues. Then, we will take the views of people from all over the Territory and come up with a draft of what we believe the Territory community wants. We are not doing this job for you. We are just presenting the preparatory material.

The second question that we are asking people relates to the composition of what we call a constitutional convention which is basically a very large committee of representatives of people from all over the Northern Territory. These are people who can represent the diversity of opinions, cultures and communities throughout the Territory. We need advice on how you think we should put that committee together. That constitutional convention will work through what we have done and determine whether we have got it right. If they think it should be amended, they will do that. They will argue the issues out until they have what they believe the people of the Territory are saying. That proposed constitution will then be put to the people to vote on in a referendum. If the people are not 100% happy, they should vote no and the constitutional convention will go back to its community consultation and keep working on it until it has a document for which the people can vote yes. The people must say that this is how they want the Territory to be and that these are the rights that they want entrenched and locked away from the government. That will be the foundation stone for the future and it will have come from the people.

Our job is to act as catalysts and coordinators. You live in Nhulunbuy and on many occasions - and justifiably so in many instances - you have said that the government does not listen to you or take account of your views. The feeling of people over here is that it almost seems like you are not part of the Northern Territory. I know because I felt the same myself when I lived here quite a number of years ago. It is a real feeling. This time we are saying that we want you to be involved in this most fundamental task for the Northern Territory and ensure that the needs, aspirations and attitudes of the Gove Peninsular community are taken into account in the writing of this constitution. The writing of this constitution is your task as much as it is the task of other people in the Northern Territory.

This will not be a case of your saying: 'Why didn't they ask us?' I hope that it will not be a case of our saying: 'Why didn't they get involved?' It is important for your future and for your children's future. This is a unique moment in Australia's history. It has not happened before and it will not happen again. This is a chance to get it right for the future. It is too important to walk away from. I urge you all to become involved, individually or in groups, and help us to work for the future of the Northern Territory.

Dan, would you like to say a few words?

Mr LEO: Yes, I will. Steve Hatton and I have known each other for many years. We have crossed swords over many issues over that period of time. Actually, we have different reasons for pursuing this common goal. I cannot speak for Steve's reasons and I cannot speak for the CLP's reasons. I can speak for my reasons and for my political party's reasons. I am sure that most people in this room would appreciate my political future and therefore my contribution will be rather more esoteric than his has been.

Like it or not, I have been lumbered with the consequence of being a good old-fashioned Australian nationalist. I am an Australian. I am not a Territorian. I am not a Queenslander, New South Welshman, Tasmanian, Victorian, Western Australian or South Australian. I am an Australian. Like it or not, that is what I am going to have to live with. I am an Australian. Unfortunately, what we are faced with in the Northern Territory is a crisis of confidence about the Northern Territory. We are not a state, we are not Australians, we are a territory. I do not think that that is particularly healthy, productive or in any way germane to being an Australian. I think

there are very good reasons why the Northern Territory should have a developed constitution, not the least among those is to become part of the general Australian community.

Most people here are aware - Yumbulul excluded - that their time here, like mine, is relatively limited. We could perhaps go and live in other parts of Australia during our lifetime. Our children will have the opportunity to do that. But, this land mass that we call the Northern Territory - no matter what people live here or for how long - needs to be part of what we call Australia. Unfortunately, the problem at the moment is that we are not part of Australia. The legal and constitutional problems all exist. However, the psychological problem is that we are a frontier, we are perceived as being a territory and that we are not part of Australia.

For those reasons, I believe that we need to develop a constitution. Statehood is further down the line. However, we need to consider our part as Australians. You have the right and the ability to leave here and live in some other part of Australia. Other people may come and go. However, the bottom line is that this land mass called the Northern Territory is not going to depart. There will always be people here. I disagree with Steve who says that you have to contribute, that you need to be heard. I do not see it that way. I think you have a marvellous opportunity, a once-in-a-lifetime opportunity, that will never be afforded any other generation, to contribute to something that is meaningful to Australia - not to your own lives because that is fairly transitory. You have an opportunity to contribute to Australia generally. As human beings, you are being afforded an opportunity that in the future will not be afforded to anybody else. It has not been afforded to anybody since the states were first formed at the turn of the century. It will not be afforded to anybody else in the future. You are being given an opportunity. If you do not accept that opportunity, you are fools or you are scared. It is one of the two. You are either cowardly or you are dunces. That is something that I cannot accept in any human being. That is why it is not a matter of asking people what they can contribute. I think you have an opportunity to make a contribution to this country and you are ridiculous if you do not make it.

Mr HATTON: Thanks, Dan. Dan has made a couple of very valid points there. Rick, would you like to make a couple of additional comments?

Mr SETTER: I think it is important to reflect back on the history of the Northern Territory when one talks about a constitution for the Territory. We should cast our minds back to the 1820s when this area of Australia was first taken under the umbrella of the colony of New South Wales. It was not until the 1860s that it was passed over to South Australia and administered from Adelaide as the Northern Territory of South Australia. That continued until 1911 when South Australia put it into the too hard basket. The only access to the Northern Territory was by boat around half Australia or by camel train or horseback up through the Centre. It was an horrendous business either way. Thus, in 1911, it was passed over to the Commonwealth of Australia.

Mr HATTON: At the price of a railway line that we never got.

Mr SETTER: Sure. That is where we have been ever since. I will not go into detail about the political history of the Northern Territory since that time but it was not until 1974 that we had our first fully-elected Legislative Assembly. During all that time, the Territory had been under the direct or indirect control of the bureaucrats in Canberra. Because of the agreement that Nabalco has with the Commonwealth government, an agreement which was put in place before self-government, there

is a unique situation here. The Northern Territory government's powers and responsibilities in this area are fairly limited because we are still locked into this Commonwealth agreement which was never repatriated to the Northern Territory government.

It was not until 1978 that we achieved self-government. Thus, it has been a long and tortuous path to arrive at where we are today. However, since 1974, and more particularly since 1978, the Northern Territory has really come into its own. We still have an awful long way to go but you have seen considerable development in this place since that time. The main reason for that is because we have had a fully-elected Legislative Assembly, consisting of people who live in the Northern Territory and who are responsible to their constituents whom they see almost every day of the week because they live in the same communities. That is when the right decisions are made for the people of the Northern Territory. In other words, you have your own elected representatives representing you in the parliament or on the council and they are accountable to you because they will have to front up next time for re-election. You can lobby them and have an influence on their decision-making. That was not the case in the old situation.

We believe the time is now right for us to develop a constitution. Steve told you earlier all the reasons why we should have such a constitution. I will not go into those again but let us look at the Northern Territory in relation to the Commonwealth and the rest of the states. As you all know, we have the Commonwealth government as an umbrella over all the existing states. That was established in 1901 and, at that time, all of those states had their own constitutions in place. Most of them had had a constitution for quite a number of years. The Australian Constitution came into being in 1901 and therefore it is almost 90 years since anybody has developed a constitution in this country. Times have changed because, as Steve rightly pointed out, back in those days, politicians got together and it took them 13 years to put the Australian Constitution together. It was done by politicians and it took even them a long time.

This is the first time in this country where the people have been consulted on this matter. We have now visited more than 40 communities throughout the Northern Territory - some of them twice - and spoken at meetings such as this. We will come back and talk to you once more because we want to give everybody ample opportunity to have input into this constitution. As I said a moment ago, times have changed. It would be very simple for us to sit down and write a constitution on your behalf. We could do it. We have obtained legal advice. It has taken us 3 years to put together that document and a couple of others. I refer, of course, to the 'Discussion Paper on a Proposed New State Constitution for the Northern Territory'. It contains a range of options which we have debated over the last 3 years. We could do it but there are many other issues that were not around in 1901 and they are issues that we believe you should be consulted about.

That is why we are here. We are not here to tell you how it should be done. We are here to explain to you what it is all about and to seek your input. There is a whole range of issues. We would like you to read these various documents so that, when we come back, you will be able to have your say. It is very important. You owe it to yourself, to your children and to your grandchildren to ensure that you grab the opportunity with both hands and have your say.

Mr HATTON: Thanks, Rick. We have done enough talking to you about this. We are here to explain why we are coming around to talk to you now. We really do not expect people to

have been studying this material in detail and be ready to give us detailed submissions. However, if do you have any thoughts, do not hesitate to tell us. Basically, however, we are here to ask you if you would like know more about this task. Ask about anything that you are unsure about. What is a constitution? What sort of things can go into it? What do you think? Are there any questions that you might have or points you would like to make? We would like to answer your questions. It is hard for us to try to second-guess what you might want to know, but we really are keen to listen. It is open to you to raise anything you wish.

Ms MAURER: How long is it likely to take?

Mr HATTON: We were hoping to return here to receive submissions towards the end of this year. That may not be long enough. We may need to do it early next year or perhaps 9 months from now. The Christmas period is pretty hopeless for such a visit. Basically, most of December and January are out because everyone switches off and the wet season affects our ability to visit some communities. We were hoping to visit a number of places in October/November. Apart from that, it will be February, March, April next year. At the moment, we are supposed to be preparing a report to the Assembly by April next year. However, we were supposed to provide a report by last year and the year before. We keep obtaining extensions of time as we come to realise the depth of work that must go into this job. There is no time frame. We are not going to rush it.

If things run smoothly, it might take 3 to 5 years to have a constitution written. However, given some of the issues that are arising, I do not think it will go quite that smoothly. You have to think about the Northern Territory community in totality, and that includes the Aboriginal people. They have some very serious and important concerns about ensuring protection for their land rights, sacred sites, language and law and culture. Those are fundamentally important things to the Aboriginal people. I know that because I have spoken with many Aboriginal communities. I know that there are many people who do not understand what that means. People in the white community are saying that they want equality with Aboriginal people because they believe that non-Aboriginal people are more equal than non-Aboriginal people in some respects, and that is a valid point to make. When I go to Aboriginal communities, the people there say that they want equality. They say that they have inequality in terms of health, education, housing, water, job opportunities and a future for their kids. I think it will be very interesting in this process to see the communities sitting down together and putting their views to each other. If people have the persistence to talk it through, you might be surprised to find that what everybody is asking for is equality. Perhaps if they start listening to what the other side is saying, they will find a way to proceed side by side in equality. If the process works properly, we can break through some of the serious concerns that exist in both the Aboriginal and non-Aboriginal communities. With understanding, there will come mutual respect. That is why it will not be a quick process.

Mr STIRLING: Steve, the last time you were out here, I remember there was something about the convention either being elected or nominated but the constitution itself ... (Inaudible).

Mr HATTON: There is a discussion paper which was also available last year. We have not taken that any further. We are not prepared to establish a convention until we have taken submissions from the community or to make a recommendation until we have done that. As Rick said, we could sit down and write some ideas. I can guarantee that, no matter what we put together, the people would say that we had rigged it somehow to come up with the result we want.

I am not going to give you that opportunity. I am asking you to tell us how you think it should be put together, whether it should be elected or appointed from sectional groups or regions or whatever. Give us some ideas. They will go on the public record so that everyone can see what you are saying - just as tonight's meeting is being recorded. I am not prepared even to put forward my ideas. I want you to think about it and, when we come back, tell us what you think. It does not matter how way out you might think your ideas are, we would rather hear them. Come up with some ideas because there will be groups whom we might not think about. I am saying the same thing to every community.

Mr FARLEY: Can the constitution, once written, have the power to change any laws that are in force at present?

Mr HATTON: Provided they do not step outside the Australian Constitution, the people can write whatever rules they want in a constitution. That is what it is all about. For example, there has been a suggestion from Aboriginal communities that it should be written in the constitution that Aboriginal people should first be accountable to Aboriginal law in terms of punishment for offences and face European law only after the Aboriginal law has finished with them. That is pretty draconian but it is a view that has been expressed by quite a number of communities. We have had submissions that there should be a constitutionally entrenched requirement to ensure that any development that occurs cannot be damaging to the environment. We have had suggestions from a very strong lobby to have what it calls 'citizen initiated legislation'. That means that, if you can get a certain percentage of the Northern Territory electorate to sign a petition for particular legislation to be enacted, the government is compelled to put the proposal to a referendum of the people and, if they vote for it, it will become law whether the government likes it or not. That exists in some states in the United States and I think in Switzerland. That option is there. I cannot say whether I think it is good or bad. Those sorts of things are being raised.

That same group proposed a process called citizen recall. This means that, if you get a certain percentage of the populace to sign a petition, you can force the government or an individual member to go to an election. You can put such things in a constitution because the people make these laws. The only restriction is that you cannot step outside the Australian Constitution. For example, you cannot create a republic because Australia has a monarchical system of government. The rules demand that we have a monarchical system. The Governor is the Queen's representative and we cannot change that part of it.

This book discusses many of those sorts of things. Should you directly elect the head of government? Should the ministers come only from among members of parliament? There is a system in the United States where the head of government appoints ministers and they do not need to be members of parliament. The parliament has a separate role from that of the executive. Our system of government is called responsible government where the parliament is responsible to the people and the government is responsible to the parliament. In the United States, the executive government has a separate role. You could do that and it is discussed in here too. There are all sorts of ideas in here. There are some things that I like and others that I do not like. There are some things that you will like and others that you will not like. However, the options are there.

We have prepared a list of questions that are raised in this book. The questions alone take up 11 pages. Thus, it is necessary to take it a bite at a time. Take one subject at a time. For

example, do you think we should have an Upper and Lower House or just one House of Parliament? There are arguments for and against that in there. Have a look at it and form your views on it. That is pretty easy to handle, isn't it? Just take it step by step and you will be surprised that, at the end of the day, you will have a pretty good idea of what you want. That is how you should go about it so that it is not as frightening as it might have sounded when you first addressed it.

Mr LEO: I must admit that I have not attended many meetings of the committee. In fact, tonight would be the second public forum that I have attended. The big problem that the committee faces is that there is the view that politicians are trying to impose something on people, that somehow or other both sides of the House have got together and said that the people need this constitution and we will distill their views to our collective advantage as politicians. I believe that that is perhaps the public perception of what is going on. Speaking for myself, and I would be surprised if any other committee members disagreed, that is not what is going on. What is going on is that politicians have recognised that there is a vacuum in Australia and we are part of that vacuum. Perhaps, because we are politicians, we are towards the pinnacle of that vacuum.

The important thing is not that we believe that that vacuum needs to be filled. It will be filled only if you believe it needs to be filled, if you believe there needs to be change. If you do not believe there needs to be change, it will not occur. We could continue to have meetings in Nhulunbuy, a community with a population of some 4000 people that is represented tonight by some 15 or 20 souls. That vacuum will not be filled. Nothing will be done. However, when the Northern Territory's population believes that the vacuum needs to be filled and that we need a constitution, then indeed we will have one. In a sense, the committee is in the role of devil's advocate. We point out the problems and it is up to you to decide whether or not you want to fill the vacuum and whether or not you believe that there is something more to offer. That is your business. It is not ours. It is very much your business and you can indicate what you want in a constitution. It could be 2 Houses or 5 Houses. I do not care how many Houses you want in parliament. Argue it all out. It is a community decision, not a political decision. It is something you will have to do.

Mr SMITH: Steve, at what point do you decide whether you are going to get a constitution or not going to get a constitution and how do you make the decision? How do you decide the people have said that they want it?

Mr HATTON: The constitutional convention itself will make those sorts of judgments. I am uncomfortable. I would like to think I can say that these are the steps and, boom boom, it will be done. However, if we are to do this job properly, some of those sorts of decisions must be left to the convention. The convention could have a series of what I would call 'sub-referenda' where it might take a single aspect such as the structure of the parliament and obtain feedback from the people by means of perhaps a multiple choice questionnaire. It could then deal with the matter of the courts and so on. Thus, it might put a series of questions to the vote of the people to assist in developing a constitution. We will know we have got one when a good majority of the people indicates that that is the constitution that they want.

Mr McMICHAEL: Mr Chairman, I had the opportunity to be present when this committee was in Gove on 20 July 1988. Danny Leo, who is now on the committee, and I were the 2 parties from Nhulunbuy who spoke. I should refer the committee to pages 6 to 12 of the transcript of that forum wherein I identified some regional, on-the-ground difficulties that I envisaged as a Territorian.

I say that because I also am Australian. However, having spent some 20-odd years in north Australia and having lived in this area almost 4 years, I have come to realise that we are a captive community. I look at the philosophy, if you like, of a very well-consulted Territory electorate that says that it wants a constitution and I then look at my status in this mining town and I say: 'If there is a constitution that gives rights to all Territorians to be equal with the other Australians who live in the states, what happens to my rights if I live in Nhulunbuy?' The answer to that, as I see it tonight, is that my rights are abrogated to a mining company which has the right to govern the town in which I live under special agreements with the Commonwealth which are 20 years old. This town does not have the very basic third tier of government in terms of formalised local government. It is a town which, cost-effectiveness or otherwise, enjoys or 'disenjoys' a wonderful set of community facilities, but which has one of the highest per capita rate bases that I am aware of in the Northern Territory.

I come down to the simple question of saying that, if we are to look at the Aboriginal land of the Northern Territory and the towns that are formed within the Aboriginal land of the Northern Territory, we have to look at this unilateral agreement. It has to be through the consultative process that your constitutional committee is about in relation to remote areas. We have to find a way whereby the Aboriginal owners who own the freehold land under the Aboriginal Land Trust are prepared to look at Europeans working in their region, albeit for government administration, health and community services, unemployment services, social welfare, airport services, customs and excise or mining companies, retailers and the like. One thing that we cannot do, even today in the Northern Territory, is to put our roots here permanently because we have no guaranteed land tenure. I therefore commend to you, gentlemen, the thought that the constitutional convention must take up as an issue the question of acknowledging in the constitution certain fundamental elements and the rights of the Aboriginal people to retain their land and to have the control of their land. However, by means of that consultative process, it needs to be incorporated in the constitution in such a manner that it should not land-lock Europeans. They should have the right to public access corridors or the right to put their roots down and share the benefits of working with Aboriginal people in Aboriginal communities on the basis of equality.

I make the specific point that there should be public access corridors over freehold Aboriginal land to towns like Nhulunbuy which I hope one day will also be in freehold form. If we cannot get that, it should at least be leasehold in perpetuity, and that opens up a very complex and very lengthy series of consultations. It involves an off-shore principle of a mining participatory joint venture with a local mining manager and a small town of people of whom a large proportion are highly transient. What we are saying tonight will be recorded in Hansard. I may not be here next year, but I believe it is fundamental that a constitution must not overlook towns like Nhulunbuy, Jabiru and Angurugu. The fundamental basis of land tenure has to be enshrined in some form that will create equal opportunities for all people in this part of Australia for all time.

Mr HATTON: Thank you. I have no doubt that there will be debate. I have picked that up in discussions around town today and elsewhere. For example, the issue is raised in this booklet as to whether there should be a constitutionally entrenched right to local government. If there should be, what are the implications for a place like Nhulunbuy? There are things that will have a direct or potentially direct impact on your own community. I am not going to suggest anything, Tony. The point is noted and I am pleased that it is now on the record. We will proceed on that basis.

Mr FARLEY: Could the constitution have the power to change the application of European law as we know it to traditional Aboriginal society?

Mr HATTON: Yes, I think it can. As a community, you can write those provisions into a constitution and you can wrestle with the technicalities of how to achieve that result if that is what you want. Subject to the Australian Constitution, the sky is the limit. It is the people's chance to write the rules. Such an opportunity will not occur again.

Mr FARLEY: Indecipherable.

Mr LEO: The difficulty with a committee like this is that, in the popularity stakes, politicians rank somewhere between used car salesmen and dentists. We all accept that politicians are not universally popular. Individuals are the framework and the cause of whatever transpires within any state. I assume that we are about order as opposed to chaos. If you take it beyond the point that we are into order, the individual has a once-only opportunity to exert himself within this Northern Territory.

Mr WEIKE: We have representative government and then you turn around and say ...(Indecipherable) ... try to ask each one of those to have input into a constitution ...

Mr LEO: It won't work.

Mr WEIKE: Inaudible.

Mr HATTON: We cannot get 160 000 people all sitting in the same room at the same time.

Mr WEIKE: That is why we have representative government.

Mr HATTON: That is right. In a sense, this is a process that you go through from that. Your input comes from making submissions to this committee or to the constitutional convention at some stage in the next year or so. Those views will be considered. There is a potential for you to participate directly in a constitutional convention or to have a say in its composition so that there is someone on it whom you believe will honestly reflect the views of your community and provide feedback to you. The convention will be a representative body. With a population of 170 000, there is a real opportunity for the individual to have a say - far more so than if we had a population of a million people.

Mr STIRLING: Does that mean there could be a problem of lobby groups getting together and having an undue influence on what is to happen?

Mr HATTON: That could be the case. That is why our committee has gone to great lengths to contact the broad community rather than merely calling meetings and asking for submissions because that is the mechanism whereby the organised interest groups will come forward with their views. We are trying to go beyond that to consult with the broad, so-called silent majority of citizens.

Mr WEIKE: Do they exist though?

Mr HATTON: Well, whether they do or they don't, we are trying to find out.

Mr WEIKE: You are suggesting that they go back to a sort of multiple referendum basis.

Mr HATTON: Maybe.

Mr WEIKE: After the first referendum, it would probably be a disaster. After the tenth one, you probably wouldn't get anyone turning up to the polling booths. Nationally, referenda are not very successful either.

Mr LEO: So be it. That will be a decision of the populace.

Mr SETTER: I think you will find that many of the issues will be sorted out in the constitutional convention. There will be some that cannot be sorted out there and they should be put to the people. Thus, there might be one referendum which offers options on certain key matters. Certainly, you would not have a referendum that involved a hundred questions or something like that.

Mr HATTON: I agree. Personally, I think that the mechanical clauses to establish the basic structures of the parliament, the judiciary and the executive will come together reasonably quickly. Those are not major contentious issues. But, when you start dealing with issues of the possible entrenchment of human rights or the maintenance of the concept of common law and the interrelationship between Aboriginal people and non-Aboriginal people etc, these will be significant and emotive issues. These issues will drag the debate out into the open and I will be amazed if the people do not take a significant interest in them. They might not become overly-enthralled about whether there should be a 4- or 5-year term for parliament but they might have some very significant views on the level of constitutional entrenchment of land rights.

Mr WEIKE: There were some quite basic issues brought forward in the last referendum.

Mr HATTON: Yes. However, the problem with the last referendum was that there were number of questions and within each question there were a multiplicity of issues. That is why it is my personal suggestion that there could perhaps be a series of sub-referenda. I think that within each of the questions there were elements that the people would have voted yes for. However, if you liked 3 aspects but not the fourth, you had to take the fourth as well if you voted yes. That was the problem with the referendum last year. That is why it was doomed to failure.

Mr PERMEZEL: How and by whom will the membership of the constitutional convention be decided?

Mr HATTON: We will be making recommendations to the Legislative Assembly based on the submissions that we receive. It is proposed that we will be tabling copies of all the submissions with that report. It will be up to the parliament to determine the final structure, whether it accepts our recommendations or not, and to establish the convention.

Mr PERMEZEL: The main recommendations will come from the committee?

Mr HATTON: Yes. And we are seeking submissions on that. Are there any other issues that anyone would like to raise?

If not, I would like to take the opportunity to thank you for coming along. I know it is not necessarily the most immediately exciting subject on which a public meeting has been called. I hope that we have been able to convince you of the significance of this and that you start to become involved and tell your friends about it. If anybody would like more information or if you would like us to discuss these matters with any groups, do not hesitate to contact us. The contact number and the address are in the back of this booklet. We will do all we can to keep you informed and to provide all the information that you need to develop your ideas. Thank you again for coming along.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

YIRRKALA — Monday, 8 May 1989

PRESENT:—

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Roy Marika
Mr Wakuratjpi
Mr Wirilma Mununggurr
Mr Daymbal'pu Mununggurr
Mr Dhunggala Mununggurr
Mr Larrtjannga
Mr Gungata
Banamba
Mr Wununmurra
Mr Wununggurr

NOTE: This is a verbatim transcript that has been tape-checked. However, due to poor recording of many people speaking at the same time, some of the recordings were inaudible and unable to be transcribed.

FINAL EDIT: 8 FEBRUARY 1991

Mr HATTON: My name is Steve Hatton and I am the chairman of this Select Committee on Constitutional Development. I have with me Rick Setter, the member for Jingili in Darwin, and Wesley Lanhupuy, the member for Arnhem. They are members of this committee. If you look in the back of this book, you will see the photos of the 6 members of this committee, including Danny Leo. This committee is not like most of the committees of the parliament in that it has 3 members from the government side, the CLP side, and 3 members from the opposition side, the ALP side. On many occasions, you know the ALP and the CLP are arguing about things. This time, we are not arguing. This time, we are working together on this job. This committee has equal numbers from both sides because we are working together to try to get this job done.

The job that we are trying to do is to write a special law. It is a law that is called a constitution and it is unlike the other laws that you hear about because this one is not written by the government. It is not written by the parliament. This law is written by the people and that is why we are coming around now to talk about it and explain what we are going to do to have this law written. We are asking you and all the people whom you represent to become involved in writing this law and to ensure that the views and the needs of your people are looked after in this law. This law is not like any other law we have ever had or you have ever seen in the Territory. That is because, when you make this law, it stands over the top of the government. It is like the boss over the government. It tells the government what it can do and what it cannot do. You put in it things that you do not want the government to be able to touch because they are too important to you.

This law says how you elect a government, what sort of a parliament you want and how the courts will work. It says what rights have to be protected so governments cannot touch them. Thus, it contains all the really important things. It is a law which the government cannot change and which it must abide by. As I said, this law sits as the boss over the government. It is where the people say: 'This is where we want this Northern Territory to go and how we want to make laws to enable the people to live together and go forward together'. You give this law to the government and tell it that that is the way it has to go.

This has never happened before in the Northern Territory. It is the first time. All the laws that you have seen have been written by the government. It can then come along next week and change that law and a week later change it again. This is sometimes very confusing for Aboriginal people because your yolgnu law is going one way all the time. It has been the same for thousands of years and it will keep going into the future. It does not change. However, the white man's law seems to go this way and then back that way and keeps changing all the time. This law is the white man's way of writing a law a bit like the yolgnu law because it is there and it stays there. It does not change and the government cannot change it. It has all the really important things about how people will live together, how they will elect their government and how they will protect all their rights. Those rights are in this law so that the government cannot touch them. It stands over the top of the government and becomes its boss.

In this law, the people say how the Northern Territory has to go. The government does not say where it has to go. It lays out the road and the government has to walk along that road. It might go this side of the road or that side of road or down the middle, but it has to go down that road. When I came to Yirrkala previously, when I was Chief Minister, we talked a lot about people coming from different backgrounds. The yolgnu people have a different language, law and culture than the balanda people. There are people who come from Asian backgrounds who are

different again. Somehow, we have to pull all that together and say that we are going to go down this road into the future together. How are we going to live side by side? How are we going to go forward together with everyone being equal and everyone having a good place to live? If we all work hard together on writing this law and argue about it but get it right, we can make it that way. We can enable everyone to go forward together and protect the things that are important to us. Wesley and Rick will perhaps talk more about those things, but I simply want to put across the message that you must write this law and put it over the top of the government, that the people will say where we have to go and how we will get there.

You can put in that law the rights that we talked about. It might be your right to vote in elections so that the government cannot take that away from you. There might be other rights that are really important to you such as your land rights. You might want to put something in there that the government cannot take away your land rights. You might put in there that the government cannot destroy your sacred sites and that it must protect them and your language, culture and law - the things that are really important to you and which you do not want any government, no matter who it is, to be able to touch. If you put them in there, you will protect them from the government. That is what this people's law is about.

Every other government in Australia has one of these constitutions over the top of it. The federal government in Canberra has a constitution over the top of it that says what it is allowed to do and what it is not allowed to do. All the state governments - Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania - have a constitution over the top of them. The Northern Territory does not have that. We are the only place which does not have a constitution and we are not protected by the constitution over the Canberra government. The federal government can do what it likes with us because the people have not made this law to stand over the top of us. There is lots of fighting because the people have never said: 'We will go this way'. It has always been the Canberra government or the Darwin government. It is always someone telling you where you have to go and we have all sorts of fights about that.

This time, we are going out saying: 'The people have to write this law and they have to tell us where this Northern Territory has to go, not only for us but for our children, our grandchildren and grandchildren's children'. How are we going to make this Northern Territory a place that our children and our grandchildren will be happy to live in? How are we going to make the rules by which this place can go forward? That is the sort of job that we all have to do as Northern Territory people. We have to write that law and start sorting out some of this fighting that is going on. We must work out how we can come to an understanding of each other and go forward together with respect. We must work towards doing that through this law.

I am not asking you to tell me now what you think should go in that law. All we are doing today really is telling you that we have this job to do. We have come here to tell you about it because we want you as a community to talk about it and think about it. Think about the sort of things that you believe should go in there to protect the interests of your people. Listen to what other people in the Northern Territory are saying and think about that too. When you have had a chance to get your ideas together, we will come back later this year or early next year and you can tell us what you think.

After we have got the ideas of all the people, this committee will sit down and try to write up what we think the people are saying. We will try to get it right. However, we are not going to do this job in the end. We are just going to put down ideas for people to look at. We want then to form a big committee of representatives of all the people in the community, representatives who can speak for people all over the Territory - people from Pitjantjatjara country, people from Alice Springs, Darwin, the VRD, Arnhem Land and everywhere else. That special committee will be called a constitutional convention. This committee will have to meet time and time again. The representatives will have to talk about what we have done and determine whether it really is what the people are saying. They will argue it out and come up with what they think is the law that the people want. When they have done that, it will be put to the vote of the people in a referendum. If the people think that it is good, they will vote yes. If they think that it is not quite right, they will vote no. If they vote no, we will have to go back and start work again and we will have to keep on working and talking until we get a law for which the people will vote yes. When they vote yes, it becomes the people's law because the people are saying: 'That is what we want. That is how we want this Northern Territory to go in the future. These are the rights we have to protect from the government. This is how we want to make a government. This is how we are going to vote for governments. This is how will live together in the future'. That is what we have to write this law for.

You have heard a lot of talk about the Northern Territory becoming a state. Some people think that that is a good idea and some people are not very happy with that at the moment. They are not sure whether that is good or bad now and they want to know more about it. They are saying: 'Hold off a bit'. Some people are for it, some are against it and some are undecided. But, I am not asking you that question. We are not saying that the Territory should become a state. What we are saying is that we cannot even think about the Northern Territory becoming a state until we know what we want. What is a state? How is it going to work? How will the people's rights be protected? You do not know that until you have done this job and you have written this constitution. When you have finished writing this constitution, you say: 'That is how we want this place to go'. After that, perhaps you may ask whether you should become a state then or later. However, you cannot do that until this job is done.

This job of writing the constitution will take 3 years or perhaps even 5 years to do it properly. It will take a long time because there are a lot of things to sort out in the Territory. There are a lot of people to talk to and we have to get this one right because, when we make this law, that law is there and it will not change. That is the way it will be for people in 100 years time. They will go that way. We have to get this one right, not only for ourselves but for our children and our grandchildren. You cannot say, 'That job is too hard; I do not want to do it', and walk away. If you do that, you will not be carrying out your responsibilities to future generations, to your grandchildren and great grandchildren.

You fought hard for the future and for your land rights, didn't you? There was the bark petition. You fought to get your land rights in place and to build a future for your children here. This is part of that. This is the next step: to sort out the fights that have been going on, the arguments between balanda and yolgnu, arguments about sacred sites. How are we going to have the laws going together instead of bumping into each other all the time? We have to sort that out so that we leave a place whereby our grandchildren can look back and say: 'Those old people did a good job for us. They made this a good place to live in for all of us'. If we do not do this job, they

will look back and say: 'Why didn't those people do their job? Why did they leave that mess behind for us to fix up?' That is the difference. If we do this job, and do it well, we will leave behind a place that our children will be proud of and they will be proud of all of us for doing that job. If we do not do it, they will say: 'Those people let us down. They did not make the future good for us'.

That is why we have a responsibility - not to ourselves but to our future generations - to work on this job. And it will not be easy. You know that there will be lots of arguments. There will be things that you think should go in there and that other people will not want to go in there. You will have to talk at that constitutional convention. We will all have to talk and talk because, the more we talk and explain why some things are important to us, the more other people will understand. In this way, we will begin to get where we want to go. The other people can tell you what is important to them and help you understand what they are thinking. Together, if we understand each other, we can make that road. That is what we have to work towards. That is the only way that we will make a good future. We cannot walk away from this job all the time; we have got to do it.

I have come here to ask you to be sure that you become involved in this job as responsible people and talk to your communities and get them thinking about it. When this is being done, make sure that you have your say and that it says what your people want. Make sure that it is right for your people. Do not leave it to someone else to do the job. That is the only way we are going to do this job properly and make a good future. We are here to get you thinking about it. Let's get to work and start working on this one and work out where we want the Northern Territory to go.

Mr SETTER: In Australia, we have the Australian government that looks after all Australia and we have 6 state governments - Queensland, New South Wales, Victoria, Western Australia, South Australia and Tasmania. The Australian government and all those state governments have their own constitution. They all have their own strong law, like the one that Steve was talking about. It is a law that is very hard to change. It is perhaps like their bible and all of their government is based on that strong law, that constitution.

The relationship between the federal government and the state governments is like that of the parent to an adult child, the young fellow who is grown up but the parent is still there. But, the Northern Territory is not like that. A long time ago, the Northern Territory was just like a little child in this relationship. That is because we do not have that strong law, that constitution, like the states and the Australian government have. In 1978, we became a self-governing territory and we have our own government which makes many laws in the Northern Territory. Steve, Wesley and myself are all part of that Northern Territory government. So, in 1978, we grew up a bit. We grew from a small child to maybe a teenager. But, we are still not an adult. We have not grown up to be a young fellow like this. We are still down here. We need that law to help us grow up. That is very important. If we never get this new constitution, we will never grow up. We will always remain like a teenager and never become a man.

You have probably all seen this poster. It says: 'Have your say'. That is why we have come here to talk to you. We want you to think about this, discuss it among yourselves and tell us what you think about it when we come back next time. Steve, Wesley, myself and other members of the parliament could sit down and have a meeting and we could write that constitution ourselves.

But, it would be no good if we did that. It is very important that we should come and talk to all of you.

In the last 2 months, we have been all around the Northern Territory, from the south near Alice Springs, to the middle near Tennant Creek and Katherine and now to the Top End. We have spoken to a lot of Aboriginal people and a lot of white people and we are saying the same thing to all of them. We want to explain what we are trying to do and ask you to think about it. When we come back next time, you can tell us what you would like put in that strong law. That is very important. If you tell us what you are thinking, you will be happy with that law when we write it. It would be no good if we wrote it without asking you. That is why we are here to talk to you.

Apart from that book, there are other books that we have written already which contain a lot more information. However, I will not talk to you about those today. They are there for you to read later so that you will understand more. We will leave copies of those for you. I will close off by urging you once again to think about it, study these books and discuss it among yourselves so that, when we come back next time, you can tell us what you would like in this new strong law, this constitution.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

You may have already heard from our chairman from this committee and also this man here, Rick, as to why we have come here. The Parliament of the Northern Territory has given us this job. They have told us to go and ask all of the Balanda and Yolgnu people of the Northern Territory if they would like to have a constitution, to be a part of this law. If Balanda and Yolgnu together would like their laws written into a constitution. This man (pointing to Steve Hatton) has already told you about this.

In the past Canberra has been looking after the Territory but recently they have been giving us more responsibilities, bit by bit. For example, the Territory is now running it's own health services, public services and police department, and we've got our own Parliament for the Territory just like other states. But what we don't have is our own roots, a constitution for the Northern Territory - we still don't have this, yet. This is what the committee are here to talk about, not statehood, but the establishment of a constitution, a law in which we can plant all of the sorts of laws which we want to include for the Yolgnu community. Laws that will stand strong before the Parliament of the Northern Territory.

The constitutional law requires this. It will not allow politicians to play - fool around with these laws once they are written. The people's power is the constitution. We can bring all our Yolgnu laws together into one constitution which cannot be touched. But it's your decision both Yolgnu people and Balanda, as to whether you agree to this or disagree to this one. We cannot do this behind your backs and once those laws are created we cannot change it like the current laws of the legislation where politicians have the power to change them in the

parliament when they want. For example, our kind of job is to change the legislative laws to do with alcohol, putting prices up for cigarettes and petrol. We, the politicians, have the right to do this because we have been elected by you, the people, to take on these responsibilities. But for the constitution only Yolgnu people and Balanda people in the Territory population have the right to change the constitutional laws. This is what we are about to begin at the moment. This is why the two parties, Labor Party and Liberal Party believe it is a good reason to ask the Federal Government for our own constitution.

At the moment our aim is to tell you this story about the constitution and advise you. We are visiting over sixty communities throughout the Northern Territory and we are saying to people what we think - like now we are advising you. You look at this, think about it, give us your views and let us know if you want us to come back. If you get any ideas about what we've been telling you then we'll come back and tell you the story again. This is our lawyer and these are the people that are working for us. And it's for this reason that we are going around and saying, "Here's the paper look at it, think about it and let us know if you want to know more." Then we'll come back and share ideas. This is the reason we are here. This is only the first step. The second step is when we've finished going through these discussions we sit down and write a draft paper and then give a report to the Parliament sometime perhaps this year or next year.

When are we giving a report to the Parliament?

Mr HATTON: We are supposed to report by April next year, but as you know, in the past, we have had that one year obligation for 3 years. If we do not have it done properly, we will delay it.

Mr LANHUPUY (Speaking WANGURRI LANGUAGE).....

(English Translation)

We have to report to parliament first and then parliament must agree and say, "OK, it's fine". In the second stage we will get all the people from mining companies and other businesses, get them together and have a big meeting which will be called a Constitutional Convention. At that meeting we will sit down and begin to look at ideas for this paper and start drafting the laws and say how we want these laws to be. We will say what laws the Northern Territory should have - laws like other states have. When everybody agrees in that big meeting then this paper will be voted for in a referendum throughout the Northern Territory. If the Northern Territory population disagrees on this paper, this constitution, then this paper will return into the hands of the politicians, us mob, and we will have to start all over again talking to people both Balanda and Yolgnu. When everyone agrees to have this constitution then it will overcome our parliamentary powers. It will become a foundation - a very strong law for the Northern Territory. If you don't trust us to look after your land rights, like that man has been saying, then put all your laws into this paper here and then no one can play

around with them. Put your customs, your culture into this constitution then the politicians cannot play around with them. Only you the Territory population will be able to make any changes to it by voting.

At the moment we are under legislative laws and it's easy for us to do anything we want to do because we have the power to do it. We are the ones that you people voted for. If you put your laws in this constitutional paper we can then have power for our rights. We will have the right to talk for our freedom, for our religion for our culture and to go into an Assembly meeting and other things if only we put it into the constitution. Then the politicians cannot do anything with it. Only the Yolgnu and balanda, those of you who vote for this paper, will be able to make the changes to those laws. This is fairer. If you people give a little bit of power to those of us who sit in the parliament with this constitution you will be creating a law which can overcome our powers and everyone in the Territory will be able to change this law. To me this constitution sounds like a very good idea, a good way of thinking, so the politicians cannot interfere with the laws year after year changing our laws. At the moment we are only sharing ideas with you people and the committee are telling you this story and sharing our thoughts. We will come back another time to visit you and to talk more.

Mr Daymbal'pu MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

I will talk briefly and I will talk to you (Lanhupuy) in my own language because you understand my language and I understand yours.

I've got two things to say here. There is their story (the committee), our story and everybody's story. I work for Laynha (homeland) and I'm interested in continuing to work for Laynha, for Yolgnu people. I'm just letting this government mob know this. You mob in the Northern Territory understand Yolgnu laws before and we are still living with those same laws and the same culture, looking after our culture and our thoughts. Those old people who helped us to know more and overcome, the main heads of our clans, laws and culture, the ones who look after our language and laws are not here today to advise us. You government people must understand us from the start. You must understand how we live with our law and our culture. If you government people want to change laws for Yolgnu people then we have to sit down face to face. Don't give us your backs and talk behind our backs. Let's talk straight. The government people tell us what stories they have and we respond with what we know. When they look at our land rights, and they have already heard about our laws and ideas because we have talked about this before. They already have it documented. From now on we will have to open our ears and eyes to see what is going on. The government people should turn around and look at us when they are talking. We have already talked about our land and our culture and we don't forget about that because that is where we stand. Now we have to understand their ideas and laws.

I'm saying this to the government people not you Lanhupuy because you are Yolgnu. The Balanda government should understand our laws and from here on we will give our ideas on laws. This is what we think and this is where we stand. There has been trouble over our land and we stand firm on our land and culture. I'm the chairman for Laynha and I'm giving ideas for Yolgnu from that position. Now the government is turning around and they should look at us Yolgnu in a good way, face to face. We people all together need to sit down and work together on what laws we should have written in this paper. We Yolgnu people need to sit down with you government people and watch you write these laws because we don't want the laws in this constitution to be crooked or half done. What will happen in the future if we don't get the laws straight? I just had to tell you this. When you mob take our ideas and put them into this paper you should fully understand what we want. We can't throw your government laws away, we'll have a look at them for the future. These are my ideas. We talk from this position so don't talk behind our backs away from us. You must look at our ideas for our constitution. We'll all have another meeting over there or you mob come over here and listen to our ideas. This is what I have to say to you.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yes, alright this is what Steve has been telling us and what you (Lanhupuy) have told us and what Steve told us last year before he resigned from being Chief Minister. He talked about this constitution. He mentioned it before, and now it sounds more understandable. This paper idea makes more sense now and now you're telling it more like Steve had been telling it. It's more understandable but it will take a while.

You will have to give Yolgnu people time and get all Yolgnu people together to comment and have their say on this paper. It might take five, six or seven years to do this. This paper sounds like a good one. To me it sounds great but it will take time.

Has Canberra already got a paper like this?

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Canberra has got its own constitution. They are watching the way we do all of this and how we play our games. They are waiting to get our answer. If everybody agrees then they will also agree.

Canberra are saying that Yolgnu people should talk about this and we'll get Balanda to explain to you and we'll have to get a Yolgnu to talk to you as well.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

That man Steve told us. That's what they may have said.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

That's their last power. Canberra will give us that power when we have a constitution.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

The land rights that was established for the community of Laynha and Yirrkala, for all of the people who live here is good. We live here together to form one people. Our land rights was created with legal advice from both Yolgnu and Balanda people. Now to us it is legal. We are standing firm for our land and we can care for our land. It was the legal system that helped us Yolgnu people with the knowledge so that our land rights could be recognised.

We have to stand up and look after our land and our homelands. Maybe a lawyer can help us know more about this constitution and maybe later Laynha and Dhanbul will get their own lawyers for North-East Arnhemland. That person can endorse any statements we make and then those statements can go to the committee and the community can work with the lawyers. Those lawyers can also teach us how to look into this constitution and look into these speeches that the committee are giving so that we can see what people are saying. Then a lawyer can be here with the community, when we all come together from here and there to look at it and say whether it is alright. We can look at what Yolgnu people want and what the Balanda law says and see whether it is OK for both Yolgnu and Balanda. If it is alright then we'll all go forward with it and do it this way, and we will both be together on this.

You may not want this law or want statehood. You might not like it, especially if we look at what statehood has done for other states like Queensland and Sydney. It has destroyed their culture. Most cultures in the Northern Territory are still standing firm. This is what Yolgnu people have to be careful about.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Can I reply to your speech? Let me say this first. If outstation people are willing to have a meeting whenever they want we will then have a strong meeting in one of the outstations. If Laynha is ready then a meeting could be organised at one of the outstations and we could come back. In your speech Roy, when you said,

"We don't want statehood because we are not ready for statehood". That's why the committee are saying that a constitution should come first. Statehood will come later in the future and only when everybody is satisfied. It won't be like New South Wales and Queensland who have lost their culture. This paper will be kept well above the influences of the politicians. The constitution will have power over the Parliament and that's why we are talking about this first and maybe we will have to think about this in the future, too.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

You are a Yolgnu yourself and that is very good, but don't forget your culture and your customs. Each clan must get together to look at this constitution so that everyone will recognise (dharangan) and understand it. Steve Hatton has been talking about this constitution for a while now - it has taken him a long time to do this job for us Yolgnu people. This man (pointing to someone) did the right thing. What will we say to our Yolgnu people here? Should land rights be put into a constitution or not? We might decide this later, when we really understand it.

Both the Northern Territory Government and Canberra Government should recognise that all Yolgnu land rights must be put into a constitution not in Balanda constitution but a Yolgnu constitution. If this constitution is to become real for Yolgnu people then it should not be able to be broken up or torn into pieces. It should stand strong and firm. Your speech (to Lanhupuy and Hatton) has been understood. We Yolgnu people need to discuss this later on because most of our people are back in Laynha outstations. All of the old people, the head of our clans, those people who talk for our rights, are away. At the moment there is only me and this other man the two chairpeople, talking to the committee. And these other Yolgnu people that are sitting down here are not saying anything.

The constitution must not be only good for Balanda people or not only good for Yolgnu people. The constitution must be good for both. Remember when Lanhupuy said that it was a very good decision and they will work for everybody. It must be all right for Balanda and for Yolgnu so that the two laws do not argue, but balance together.

This is what we want because in the future we, the old people, will pass away and then there will be children and more children to come after that. We will all need to have a proper constitution - we don't want one that's half good and half bad. Alright? Because of this we need to clearly understand the constitution and its laws. The Northern Territory Government will then hold the law and serve us with it. So we must make sure that they do not supply us with a half law or trick us or play any games on us.

Mr GRAY: Got to make sure it is done properly.

EVERYONE: Yo.

Mr LANHUPUY:

Yes, yes, it is alright.

MR MARIKA:

Just bear with me, this talkative no good person you see here (pointing to Mr Lanhupuy).

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

You lot sitting here telling stories are all exchanging views with us on this paper. I've already told you that we're happy to come back any time, whenever you are ready. This one might take five years or six years until all Balanda and Yolgnu people understand about this. Then we will put it into the law.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

To us Yirrkala people this is a new thing which is very good. We haven't seen this kind of constitution before. This is all new to us.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Remember what the old people have said before in the past when talking about our land rights, and still their voices seem to exist now - their voices are still alive. This is good for the new generation because they have fresh minds, and the new generation is building up. The new generation is growing up and going to school, some are married. Still today their minds and voices are fresh. Today they talk about the same thing - they are on their ancestors tracks talking the same things over.

Should we change these laws so that all Northern Territorians will share one law, for both Balanda and Yolgnu? Balanda will have their law and Yolgnu will have their law. Balanda and Yolgnu must put down their laws together and work together. They should not take each others laws. Yolgnu laws should not be interfered with by Balanda people. Yolgnu people do not interfere with Balanda law, or other different laws, they look after their own laws - Balanda law and Yolgnu law separate.

We come together when we share the same jobs, when we work together and only then will we all be on the same level and try to balance them together. Not Balanda up and Yolgnu down. In Darwin our law for the Territory should be level

not crooked. We should share one law. We don't want the Territory to steal other Yolgnu people and then kill them. Our Territory laws should be kept clean because back in the old days, Yolgnu people from the Territory were taken away, kidnapped, and they never came back. They died. Queensland took my father and his brother away as slaves and he died over there. My father is your waku (relationship term to Lanhupuy). Queensland is a thief. Please, you should think about this really seriously because we are not ready to go and see our fathers' burial ground because our fathers were taken away, kidnapped. The Territory law should be strong so you must legally support us for this reason - for my father. You mob in Darwin should do something about this. Two of my fathers and two of my cousins burial grounds are over there in Queensland.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

That state, that mob over in Queensland, took our people away.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

Our law should be strong and clean. Our Territory should not take any other Yolgnu people from other states and then kill them.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

The Territory population should do something about it.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

I will have to do something myself on laws that concern us.

Someone.

Yo (Yes).

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

That's Yolgnu custom and other certain cultures which is ours ... (not clear)

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

That's all I have to say to you. I want you to do this one job (favour) for us, for every Yolgnu staying in Yirrkala and for those staying in their homelands. The government in the Northern Territory should support us legally on this (referring to Queensland).

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Excuse me for interrupting what you are saying. I already know that story (talking about gatjil djerrkura). He has already told me and I know that for myself.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Not now, we'll talk about that sometime later.

Mr LANHUPUY: Yo. (Yes.)

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

When we put our laws into a constitution they should be clean, not dirty like other state's laws.

Mr LANHUPUY:

Yo

Yes.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Our laws and our people should keep well away from those of all the other states. To the other states we say they are no good because they took away too many

of our people. They snuck up and kidnapped many people. When we have our constitution for the Northern Territory we should have clean and good relationships with the government, not corrupt. Remember when Steve Hatton said, "We don't want two roads - one good and the other one bad". Unlike Balanda people who always change their laws, Yolgnu people have always had one law. Alright? If what Steve has said is true then our laws should be together. Ok? Let's all come together to one true road. On this point in the past there have been a lot of mistakes. We must come together on the right track.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

That state is a thief.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

An example is Queensland, a long time ago in Queensland, Balanda people were thieves. This was before there were states and they were independent doing what they wanted. The government took away the rights of the people because Queensland became independent and a state before Darwin. In Darwin, the Northern Territory hasn't become a state. Darwin has never been a state since I was a boy. It's just now that they are thinking of statehood. They are trying to get Darwin recognised as a state so we can have our own constitution. If we work together properly through the community with proper communication until we come to an agreement then we will be unified.

Mr LANHUPUY: The Northern Territory is lucky. The last time other places became states in Australia was in 1901, right?

Mr HATTON: That was for the federal one. The states made their constitutions over 100 years ago.

MR LANHUPUY: 100 years ago.

MR HATTON: You know that there is still lots of fighting in the states between yolgnu and balanda. They have not fixed up the problem there. When they wrote their constitutions 100 years ago, they did not do it properly. They did not go and talk to the people. They did not talk to the balanda or yolgnu people, did they?

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

That's when we didn't have any voting rights that time.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

That's true.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Today Yolgnu people have voting rights in the Northern Territory and that's why we are saying, "Let's all go this way, let's listen to Yolgnu people". A quarter of the population in the Northern Territory are Yolgnu people so how could they ever forget about us. This man (pointing to someone) told us such laws. When we put our culture into this constitution then politicians cannot play around with it and the Yolgnu people will have that law and they will look after it. People have also said that nowadays we are still on our ancestors tracks, talking about the same thing. Now we have our land rights which are in our hands. It's good that we have land rights and that we see them clearly and now we are ready to set up this law for our children. We can set up how they are going to continue to live along the same tracks as our descendants. They will have the right to exercise their rights later on. But we have to straighten things out for them now.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yes that's fine, but let's do it slowly.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

We still have a long way to go and many more talks for this one.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We want to once again have this exist in two lots, but one.

Mr WUNUNMURRA: (Speaking Dhalwanu language).....

(English Translation)

Let's do it this way. Let's forget about statehood and don't put it first.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Gaminyarr, let's start talking about it and dealing with the issues before it all becomes too big.

Mr WUNUNMURRA: (Speaking Dhalwanu language).....

(English Translation)

We will have to put our constitution first and then we will be able to put all of our laws into it. Then when we die our laws will be safe and clear.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Try and break up each word that's being said to sort it all out first. Let's talk about that other stuff later, or next year sometime.

Mr Wirilma MUNUNGGURR (Speaking in an Aboriginal language):

(English Translation)

We didn't get it right when they told us before, but now it's clear and understandable what this man here (Steve Hatton) and Lanhupuy have been telling us about this constitution. They are also allowing us time to do some thinking and talking, to listen to each other's opinion and to decide whether it's good or no good, or whether we leave it and forget about it.

How we lived in the past was different and we were forced to live like captives in another world, the Balanda world. So now we will start to choose our own law because the Northern Territory Government is still young and its self-management process has not yet reached maturity.

We are able to listen to what they have to say, what they have to share with us here. Hopefully what they tell us isn't bad, but I need to ask Yolgnu people to think about this and make sure that there is nothing in their speech that will deceive us or whatever. I am not against what the NT is trying to offer us. It's just that I'm not sure why they want our law to be put into one constitution.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

They will have to advise you about this again when they have a meeting at the Laynha or Dhanbul office. I'm telling you straight that you will meet a lot of Balanda and Yolgnu people who will say, "Why are you looking at this paper and why are you listening to them"? Then you say back to them that you already know the story that these politician people have told. If you don't trust the Labor Party for your land rights, for your culture and for your customs, or even if you don't trust the Liberal Party, then put your laws into a constitution that we can't touch or play around with. This is what the constitution is about.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

That's what I have been asking for. Before it was like the Balanda people had been playing games with us, not telling us the truth. The Yolgnu people have been going wild, not knowing what's going on. But now it's much clearer. We Yolgnu people now understand what this is all about, concerning the laws. So we will get all of the leaders from Laynha and leaders from Dhanbul and the whole community and discuss this matter to make it clear to them. We understand what you have said and told us and what the Balanda have been saying on laws about our land, about other people coming and living on our land, or about certain people who might try and dig for minerals in our land. OK. We understand most of the story that we are being told, so we will then have to put our laws into this paper. We can put all of our decisions that the Balanda people have never listened to. Now this paper might allow us to ensure our decisions are heard.

Yolgnu people will need to talk about it again, and Yolgnu leaders will talk about it amongst themselves because Yolgnu people have not said anything like this to the Balanda people before. They have been holding back their thoughts. Now it's time for Yolgnu people to speak up for their rights and laws and put them all into a constitution, so that Balanda people will understand and realise our law. Before our land rights were considered small - without power, and we tried to fight for them but nothing happened, and still nothing. Our land rights haven't been recognised, haven't gone into a constitution fully, and they are still a long way from being truly recognised. We are now dealing with laws and our rights - Yolgnu laws. We need to be and will be on the same level, Balanda and Yolgnu not upside down, their law and our law. This is the way we ought to fight for our rights. The stories that you have been telling us and what the Balanda have been saying are good enough for now. Also our Territory is not under any umbrella of the state. It hasn't got it's own statehood yet.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

This is what Steve has said. Already the other states are looking after themselves. Their strings that used to be attached to the Federal Government are cut and they are looking after their own state affairs such as DAA, public services, mining and parks. Only we in the Northern Territory still have strings attached to us. What ever we do now we are still under Self Government. Canberra still make a lot of decisions for us. The Northern Territory is clinging onto the Self Government Act.

An example is if you look at our land rights, it's still in the House of Parliament and it is easy for the Labor Party or for the Liberal party to throw our land rights out if they wanted to. Some Balanda people are still trying to get to our land rights. They would like to throw them out. The only way to stop the Balanda people from mucking around with our land rights is by putting them into a constitution.

Mr MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

So if we Yolgnu and Balanda are arguing together in the communities, will Canberra and the Northern Territory be doing the same, talking to each other, so we'll all come up with good answers and arrive at the same level? If we both come together that will be all right. We will then come together to look after our laws. They will not have to argue because the Yolgnu people want them both to work together. Let's try and not reject Balanda people.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We don't want two stories - one in the Northern Territory to cover Yolgnu people and another story from the Federal. We want the same story - one good story. We don't want one bad story.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Talk to him so he will tell you. Talk to him, he will tell you.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Okay, that should be or will be our government, two governments, the Northern Territory Government and Federal Government, right? They should listen to Yolgnu people to open up their minds for ideas - listen to Yolgnu people properly instead of cutting us into pieces. We don't want the Balanda people's ideas. If the two governments, Federal Government and Territory Government make one law to look after Yolgnu people for the constitution, and if the government in the Northern Territory, Darwin and Canberra say right, we have to listen to Yolgnu people, alright. If they want to put their land rights into this constitution, that's up to them, and we have to support them, alright? Yes, that's the two governments, Territory and Federal.

Mr HATTON: Roy, we go one step further. Wes, you explained that land rights is just an act of parliament, didn't you? What we are saying is that you do not have to ask our permission. With this law, you do not say to the Northern Territory government: 'We want to do this. You do it for us'. This time, the people sit down together. I know that Aboriginal people are going to say that they want to make sure that no government can take away their land rights. That is important and you say that you want to make sure that no government can touch them. If you put that in the constitution, the government cannot touch it. You do not ask the government that. You talk to all the Territory people. You have to talk to balanda people too and explain to them why it is important. I understand what you are saying. You must tell the balanda people in Alice Springs, in Darwin and in other places, and that is what this constitutional convention is about. You have to sit

there and explain it so that they understand why it is important, so that it does not just become like a political fight. It is important to explain why there are things that you have to lock up so that the government cannot touch them.

You do not ask us. You tell us in this law. The government does not write this one. The people make this law and they put it over the top of the government and the government has to go that way. That is where it is different. With this one, you do not say: 'Please, will you do this?' With this one, you say: 'We are telling you that you must do this'. That is what a constitution is.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yes, the land rights and sacred sites are not for Balanda, they are for Yolgnu people.

Mr HATTON: That is yolgnu. That is right. This is for everyone and you have got to say that those things are important for yolgnu people. You have to explain why it is important so that your rights are protected. There are other things that balanda people might want in there too. Yolgnu people might say: 'Those are balanda things. We are not as interested in those'. Balanda people are going to want some things in there for themselves. I cannot think what is important for balandas but not for yolgnus. I think they are all important. The right to freedom of speech, the right to vote, the right to practise your own religion, the right to meet like this etc are important to balanda and yolgnu. However, there are special things for yolgnu people because you were here first. These are things concerning your land rights, culture, law, sacred sites and other things that perhaps balanda people do not understand enough about. When somebody does not understand what is important to other people, he does not think about it properly. When I have a better understanding of what is important to you and why it is important to you, then I can respect it better.

It is important not only to put that law there, but also for people to understand why it is important. It is important for people to increase their understanding of one another and, in that way, build up their respect for one another. That is how you start to find a direction. The law by itself is not enough. What is important is the understanding that comes from the talking that goes into the making of this law.

Mr MARIKA: We keep on talking.

Mr HATTON: Yes. When yolgnu people have a problem, they sit down and keep talking until they sort it out, don't they? Well, that is the way that we have to do this one.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

What about the mining? Will this mining business go into the constitution? You tell me, Bulany.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

It will, it's very big. Already the mining is under the Territory Legislation - we look after it. We will talk about all of those other businesses like mining, services, road works and there's a lot more. At the moment we should talk about bigger matters.

One very important matter is this constitution and how we will plant all of our laws in it. Leave all of the small matters and we'll come back to them later. All Balanda and Yolgnu should get together and say OK, we would like to have this paper - let's all agree to get ourselves this kind of paper. Then later on we will start to talk and understand each others thoughts - we'll agree or quarrel and again discuss this constitution. That's what he's been telling us (pointing to Steve Hatton).

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

If we stick to this constitution business some of us will have to get a solicitor to explain what is going on, to straighten out this story and make it clear to us, then when we talk we know what we are talking about and can continue to talk straight.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

That's OK, it's just like our ... (not clear). Yes.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We must be willing to take on this constitution and its ideas before we get more information from you. We must be willing before you or we can make a decision.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

We need your support. We want you to help us.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We will need legal support for this. We will have to draft it first with a lawyer. This work will be your work for the commission and you committee people will have to formally incorporate into this constitution our sacred beliefs and rituals (ranga) - all of the Yolgnu law. Then you people of the Northern Territory and Canberra governments must draft this paper with the help of lawyer and Yolgnu people.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

The other thing is that we have been to many communities and we've heard people say that the story they've heard from other groups of people about this constitutional development doesn't sound right - it's not clear from what we say. We on the committee say back to this that if you want we can all come back together and then we can sit down again and debate about it and tell you more information about this constitution.

Mr Daymbal'pu MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

I bet those Balanda people don't even understand our Yolgnu culture and views because they are living far away from us. We can't see them to talk to them. Balanda people living far away from us need to hear from us about our laws as well because they might not understand our cultural views.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yes, these Yolgnu people must understand what you are talking about, but Yolgnu people have to work it out for themselves to understand the concepts. You need to keep telling us and keep coming back and informing us about these things. You have to keep coming back and telling us the same story until we understand it. We think we have an idea about what you are saying but you have to check on this again and again, advising us until we understand the whole situation. For example, it's like telling a young boy, teaching him about (narra) sacred ceremonies. Soon he gets to know everything about what is going on in the narra. He will learn a lot of things while he's in narra and then later on he'll understand everything and be strong. This is what it is like with the constitution that we are talking about. It's like a picture of a child learning to be strong. It's like this with the constitution, too. You have to keep teaching us until we get it.

Mr Dhunggala MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

It's like people staying in their homelands, staying in their clan and tribal areas. We understand our stories because we Yolgnu live under one law, one head, with unity. Not like some of the others you tell your information to who live in their own world. Some of them will never understand what you are saying because they drink too much alcohol, or they get too highly educated and sometimes get highheaded. They are not taught the olden ways, the Yolgnu ways. They still need educating in Yolgnu ways and in that way they, the young people, may not understand but might need to understand what we are trying to teach them and advise them.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

With this (constitution) it will become more understandable.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Here are some of my thoughts on this constitution and what it can do for our land rights. There is going to be big trouble. More Balanda people will come and live here on your land and there'll be plenty more of them. Then later they will decide to take over our land. So let's put all of our laws into this constitution so we can stop them from getting our Yolgnu land. With this constitution Yolgnu people in the Northern Territory will have the power, not the politicians.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

When the Labor party gave us that paper we understood clearly what you wrote down.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

It's like what I've told you before, that's how it is with our law.

Mr Wakuratjpi MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

It's the same story that our old people have been saying and we are still talking about it now. Probably these Yolgnu people are wanting to participate in this law and are saying, "When will the laws change here in the Top End?" This is the law that we are talking about.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We only had little time before. The scheme will change and it is a dangerous thing. We don't want Balanda people who are ignorant coming around here too much, to Yolgnu areas and land and making changes. We want fullbloods to remain Yolgnu in their ways - not go half-caste in their ways. That's no good. Let's put all of our laws into a constitution later, when we make good friends with the Balanda people and get them to understand our laws and culture. We will understand each other with the colour of our skins. If we Yolgnu people have our own constitution or our own background or our own culture in the future then many Balanda people might come and the population will increase, then we will lose our language and talk and behave like other Yolgnu in other places like Sydney, Melbourne, Perth and Adelaide. We don't want that - we are against that. We talk our own language, that's all right and we also talk other people's languages which we can understand - that's no problem. But skin is the main thing. Culture with sacred ceremony is the main thing. All of this has to be planted into this constitution including our land rights and Law.

Mr HATTON: That is why you have to be part of this. You must make sure that you start working on this now and keep working all the way so that you ensure that the things that are important to you go in there. If you stand back and let someone else do the work, they might not hear. You have to start now and keep working on this job all the way. That is what we have come here to say. You have to be part of this to make sure that the things that are important to you go in there. We are trying to get started on this.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We have to talk and tell NLC straight because we don't want to be split in two. And you (the committee) and NLC should come together, talk to each other and argue about this constitution. Work it out so you don't continue to split us in two with different ideas. If the laws in this constitution are changed then the Yolgnu will understand later on, not now, but later on when we get together. By then they'll all come up with different stories. The Northern Territory Government will come up with a different story, the Canberra Government will tell one story and again the NLC will come up with another story. We should have one true story.

What we have been saying, all these Yolgnu people, is to put all of our ideas into one and get back our land rights which is currently in the hands of the Canberra Government. We need to establish and plant land rights with all other aspects of Yolgnu culture into one constitution. The Yolgnu in the Northern Territory will have to be Yolgnu and every time the Yolgnu wish to make laws for their constitution that's theirs and it will only belong to the Yolgnu living in communities, not for the Balanda.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

How many of us Yolgnu people work for the Land Council?

MR MARIKA: Uh?

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

How many of us Yolgnu people, this skin (pointing to himself) work for the Land Council?

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We will talk about that later, not now.

Mr LANHUPUY: (the question is not audible)

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

No. This man mari is not here now, he's somewhere else. He's the man who has been helping us. He worked for us Yolgnu people sorting out land right matters. We don't want just any person writing down our laws for land rights. We want a Balanda lawyer to write down the laws with Yolgnu people overseeing him.

Mr LANHUPUY: We wrote to the NLC and the Tiwi council.

Mr HATTON: Yes, we are writing to all the land councils. We want to meet with the land councils. We do not want to meet only with the land councils' executive, although that might be a start. We would like to actually meet with the whole land councils, all the representatives, so that everyone hears and talks straight. We do not want to cut them out. We want to talk. What we do not want is them talking over there and us talking over here. That is silly. We should come together and talk.

Mr BANAMBA: That is what Roy was saying.

Mr HATTON: Yes. They are running around the Northern Territory saying things about us, but they have never talked to us. How do they know what we are doing?

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

You can see me anytime.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

You mob talk to each other so you'll understand each other. We only understand a little bit of this because it's only the first stage. You're talking, talking and talking until you take over. We will have to look at this again and try and understand it. Later on if we put all of our land rights, sacred ceremonies and Yolgnu business into this law, it will be for our djamarrkuli (children) for their future. And we don't want other people splitting us in half and making comments or arguing.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

The constitution for the Northern Territory people will become like land rights for both black and white. The laws for the land owners will become land rights for everybody in the Northern Territory and this will tell us how we will run our laws, what those laws will become like and how many politicians you will list.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Put land rights into this constitution and then everybody will understand this constitution. We will put all of our comments and opinions, what the old people say, what Wakuratjpi say, what I say and what this man (pointing to someone) says. Lets put our minds and laws into this and stick to the one road. Remember what Steve said, "We don't want two roads leading us two ways", nor do we want to be jumping back and forth from one road to another. We're splashing around like a fish. We should have one road only and we need to put the things we have been talking for about our land rights down in the one place. Through the land rights system that the NLC (can't hear) understand the NT Government all right? The NLC are telling one story and creating and making trouble by disagreeing with the NT Government. Both groups have different stories.

Mr HATTON: I saw that pamphlet that they sent around and, to be absolutely honest, it is just a load of rubbish. There is no truth in it at all. Will you interpret this for me, Wes? If there is no constitution, a government can do anything it likes. Okay? When the people write a constitution and put it over the top, that ties the government down. That is how the people's rights are protected. If you do not have a constitution, the government can walk over the top of your rights at any time.

You talk about land rights. You have no constitutional rights here. If people in Sydney and Melbourne change their mind and go against land rights and it becomes important for someone to

oppose land rights in order to be elected to Canberra, they can abolish land rights. You have land rights only because of an act of parliament. You must always remember that what the government gives you, the government can also take away. If it takes away the Land Rights Act, things would be back to where they were in the 1960s. It can do that. I do not believe that it will do that, but it has that power. If you lock those sorts of things up in a constitution, the government cannot touch them.

Mr BANAMBA: That is what Roy is saying.

Mr HATTON: Yes. We cannot touch them. The land council is saying that we want to take land rights away from you. I know that it is saying that. It is not true, but it is frightening people by saying that. If you do not trust us or the Labor Party - it does not matter which side - you put the things that are important to you in the constitution and we cannot touch them. That is your protection. All we are saying to you is that, in doing this job, you must make sure that you look after your rights. Does that sound like I am saying something bad to you? We are here to say that you must start thinking about this and be part of it. If you are not part of it, other people will do the job and they might not protect your rights the way you think that they should be protected. It is in your interest that you be part of this and not walk away from it.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Right. It's not our job to argue with the NLC. This is just what they're doing. They go before us and tell one story and we follow them and tell another story. Then we go first and they come after - just following each others tracks and disagreeing. If we call the Land Council to go with us, so both groups sit down and debate these issues. You tell us what you have to say, what you think about it and then they'll tell you what opinions they have. We have to talk it through face to face, to the whole community. If they are willing to do that job then we will have to do it together. Otherwise we will spoil the relationship and reputation between the NLC and the government.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE)

(English Translation)

Do this, do this yourself.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Probably it has got to do with power. The NLC don't want to lose their power.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

How many of you work in this committee?

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Six. Myself, Danny Leo and Brain Ede. We're from the Labor party and these two here (pointing to someone) and Rick Setter and Col Firmin, they are from the CLP in Darwin.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

If you will, and this is where all the Yolgnu community come into it. This community is funded and employed by two governments, the NT and the Federal, this is where our funding comes from. If these two governments open their minds and hearts to Yolgnu people and go along with what Yolgnu people expect them to do OK, and if the Labor party and the other party (CLP) are working with all the communities in the role of ensuring that Yolgnu people understand what their party is on about, then the Yolgnu people will understand. The NLC will understand that you have already been working with the community. Now you two don't understand each other because you are sitting on opposite sides of a big river. It's not until we come together and are unified that we will lock our ideas into a constitution.

Mr Daymbal'pu MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

What are you intending to do with this law, make it one? From here on will this law be one? We Yolgnu people need to work on this law and later on put it together piece by piece. I'm asking you about this law, Yolgnu law, for our land, our country and community that belongs to those places. Our law has got its own Yolgnu world view, its own constitution. Over there in the homeland centres the people who go back there and stay and live there no one comes and invades our land. That law, that power will stand and exist forever where people go back and take control of their land.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

This is a draft. These conversations we are having are at draft stage. Culture, every community involved in the culture, every clan, every piece of land, every community within this land must put this law and lock it in so that Balanda people will understand that Yolgnu people have a fundamental connection to the land. The Yolgnu law connects with each clan, connects to the land which becomes our land

rights. These words are not new. Our law is very ancient. Once you lock this (our law) into a constitution then the NLC will understand what you are trying to do. They understand that this is where the Land Rights Act will be constituted.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE).....

(English Translation)

Like the saltwater here is still connected to the Dhuwa and Yirritja people.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

The 2 kilometre sea law is not good enough. It's still not right. The sea rights legislation is no good. This must also be put into a constitution.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

That's right what Roy just said. If you want to protect your rights then let's draft a paper that includes all of our customs, ceremonies and culture so they will remain strong and firm. This constitution can protect our rights and make them strong. All of the sacred areas on the land and sea that we sing about and all the other Yolgnu aspects of our world view must be locked into this constitution. By doing this it will make our law stronger. We will only overcome the Balanda law with a constitution because at the moment the parliament is looking after the laws. (Can't hear) At the moment we don't have a constitution. If the government people decide to change the legislation they can do it anytime and they are able to play around with us because our laws are not protected.

A constitution will stop them from doing all sorts of things to we Yolgnu - our laws, our lands and our customs. The Land Councils are carrying out their work but our laws aren't constitutionalised. Our land rights are not in the Federal Government Constitution.

At the moment our land rights are different from what we're asking to be put into this constitution. We must put our personal rights that concern us - our customs, our land and others - into this paper.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We can see what you are doing. Okay. The other thing you two groups, Canberra and Northern Territory, must sit down together and talk. Don't talk on telephones with the Northern Territory on this end and Canberra on the other end. Come together and talk.

Now we talking for the sake of the Yolgnu people and their land. This is your committee, you Wesley should add more people (Yolgnu people) to make it real for us, so that more people can work together on this, not alone. Don't talk alone, talk together. Say to us that you are working, travelling and dealing with this for the sake of Yolgnu people - this is what you should do. If these drafts (these conversations) go into the constitution the voice of Yolgnu people for land rights, the voice of all the people sitting here must be understood because this constitution, according to our own land rights, should be recognised. Therefore the mining companies will not be able to come onto our land without previous communication or consultation with Yolgnu people and the Yolgnu power, that our Yolgnu law holds (not clear) be locked in then no one can touch it. All right? Also in that constitution people will have to think critically before people make up their minds for anything for mining or anything.

Mr HATTON: This is the mining, is it?

Mr MARIKA: For mining or anything.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Let our voices, the voices of the old people this is what they have always said. Let's keep their voices alive. This is what they've been asking for all along, all of the things that we have been talking about here today. Let's lock it into this law and also the other things that our old people have been talking about, this is what they predicted and this is what is happening to the future generations. This is what you (Roy) and the older people have been talking about in the past.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yolgnu law must be legal. It has to become a constitution and legal.

Mr HATTON: Perhaps that is one way that it could be done. I do not know all the answers. Do not ask me for all the answers because I do not have them. I know that there are the issues of yolgnu law, land rights, mining and all sorts of problems. I know they are there and I know other people have other ideas. Different people have different ideas. What I am saying is that we need to get all the different people inside one room and say: 'When you work out how to live together, you can come out'. It is no good you just convincing me and me saying: 'Okay, I am convinced. I am happy'. What about all those other people in Darwin, Alice Springs, Katherine and Tennant Creek? You have to talk to them too. That is what I am saying.

Mr MARIKA: Get them to come out and talk to us.

Mr HATTON: And they have got to come and talk to you, yes.

Mr MARIKA: Ask them to come and talk to us.

Mr HATTON: That is what we want that committee for: to get representatives of the people together so that they can talk. They can go backwards and forwards to the communities and talk it through.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

The old people in the past knew what they were talking about and it was right. Even though they didn't understand the Balanda language and ways they were right in what they were saying. You mob know you were there with them when you went to court in Darwin and the High Court and you fought for our rights. So we can understand Balanda views and make views level with them. Don't chase Balanda people away - work with them.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We won't.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Because Balanda people are working here and also our law we need to lock it in and later on it will grow and become real for later on, for us and then we can talk about other things.

MR HATTON: Is it yolgnu law that he is talking about?

Mr WAKURATJPI: Any law. Balanda law. Yolgnu law.

MR HATTON: How do you make them work side by side?

Mr WAKURATJPI: Work together.

MR HATTON: Yes but how? That is the question? We have had some Aboriginal people say that they do not know whether this will work or not.

Mr WAKURATJPI: Part Yolgnu they got different ideas.

MR HATTON: Yes, that is right.

Some people have said that Aboriginal people should have to face Aboriginal law first, after that, they can go to the Balanda law. I do not know if that is the way it should go or not. However it is something that we should talk about because some people will say that that is the way to go.

Mr WAKURATJPI: Balanda law ...

MR HATTON: I do not know. All I know is that ...

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Balanda law is different, they got different culture, different background, and same goes for us Yolgnu people. We come together, we work together, we learn together, that's why we still need to understand each others background.

MR HATTON: And that is what we have got to get out of this.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

What you said before you two was to have that law working side by side.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Because still the Balanda don't understand Yolgnu law and we Yolgnu need to understand Balanda law. But we need to make the law work for everybody. Let's put our laws in this constitution. One law that recognises both laws, Yolgnu and Balanda in the Territory constitution but our Yolgnu law must exist and be recognised.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Let's be clear on this. Let's help each other on this and encourage each other for those two laws to go into the one constitution. If we put our law into the one constitution, Balanda and Yolgnu together then we can lock it in and it will be beneficial for those that are yet to come. We in the Northern Territory hold that key but we can't open the door until people say yes.

MR HATTON: That is right. The people have got to say yes. That is what makes this law strong.

MR MARIKA: Not the government in Darwin, not the government in Canberra but the people (Yolgnu people).

MR HATTON: Only the people can change that. You remember that, last year, when the Federal Government wanted to change the federal constitution, there was a referendum and you had

to vote yes or no to four questions? The government had to ask the people. The people said no and so it could not touch it. It had to stay the way it was. That is the way it would be with this law.

MR MARIKA: That the Federal or Darwin?

MR HATTON: That was the federal government in Canberra. Last year it had to ask the people. When the people saw what it wanted, they were not happy and said no and the federal government could not change the law.

MR MARIKA: Have the people in Darwin been asking Canberra to change it?

Mr HATTON: No, it was not. It was the federal constitution. Remember, last year, you had to vote on 4 questions, not for the government. You had to vote yes or no on 4 different questions. That was to change the Canberra constitution, the Australian Constitution. But, the people said no and so the government could not touch it. If we do this one properly, in the same way, the government will not be able to change it without asking the people. If the people say no, it will have to stay as it is. You can write that in there too.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

Mari, to me it looks like we're always talking about the same thing, I think you understand that already. Try not to ask them any more questions. It looks like the same thing.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

I just want to be clear on what he's saying, just so I'm clear on the idea he's presenting - say it again. Okay leave it.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

In the past you have been talking about the same issues and we have been talking about this before in many meetings, and still we are talking about it.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

This string of yours, hold onto it and somewhere that raki (strength) might break so wait until your string is stronger and just hold onto that string (strength).

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

That is the way we should be because we will be having a homeland conference soon. And everybody from each homeland will come and we might have to talk about these issues and there are people from the homeland in this meeting.

Mr MARIKA: Lartjannga, come on let's hear you talk.

Mr LARRTJANNGA: (Speaking in An Aboriginal language)

(English Translation)

This is just it.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

This is very old. You've talked about this issue before, mari.

MR Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE)

(English Translation)

In every conference we attend whether it's Laynha or Dhanbul who will we get to explain this more to us, just to explain again to the leaders, and who would we get to go to this convention or conference to explain again.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Here this man is ready to do the work.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Were the people - available.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE)

(English Translation)

This Danny Leo is the other person to see.

Mr LANHUPUY: Danny Leo.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE)

(English Translation)

Danny Leo, yes. Danny Leo's another one.

(Everybody's talking at the same time)

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Yes Danny Leo and this Yolgnu (referring to W. Lanhupuy).

Mr LARRTJANNGA: (Speaking in an Aboriginal language)

(English Translation)

I wish to speak just a few words.

MR GUNGATA: (Speaking in an Aboriginal language)

(English Translation)

I just can't remember this Balanda's name.

Mr LARRTJANNGA: (Speaking in an Aboriginal language)

(English Translation)

If and when we talk, later on.

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE)

(English Translation)

This is the man to see.

Mr LARRTJANNGA: (Speaking in an Aboriginal language)

(English Translation)

Later when we get this straight we will elect them. How many we want of these people here sitting down today who have come to this meeting. Then later we will look at them and vote for them when we come together and talk. We will get their names written down and get them to talk for us, talk on our behalf.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

Let's every Yolgnu ask the two governments, Canberra Government and the Northern Territory Government, let's all say, "Come here to our Yolgnu (narrali) and witness our sacred customs".

Mr LARRTJANNGA: (Speaking in an Aboriginal language)

(English Translation)

It looks like the discussion we've talked about is the same, when we were over at your office we talked about this before.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

That's it.

Mr LARRTJANNA: (Speaking in an Aboriginal language).....

(English Translation)

It's the same.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

That's how we should deal with them. Let's bring them through our sacred law, through our sacred rituals and ceremony.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE).....

(English Translation)

We will call them all together, people staying here in Yirrkala and everybody else in their homelands, call them to come to this meeting and then we'll look at it.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

These people will talk about it again, that is these people will talk to us in detail about it before they do the drafting of this paper.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

Yes do that together with the others for the land rights.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

We will do that, we will call them. We Yolgnu will call them to come to our Narra (sacred ceremony).

Mr Wirilma MUNUNGGURR: (Speaking DJAPU LANGUAGE)

(English Translation)

No, not next year. We still have to wait a bit longer.

Mr LANHUPUY: (Speaking WANGURRI LANGUAGE).....

(English Translation)

It's very far, we will wait.

Unknown : (Speaking in an Aboriginal language).....

(English Translation)

One thing I've already told you, that thing will be done anyway.

Mr LANHUPUY: Yo, banham Yo (Yes, that's - yes.)

Unknown : (Speaking in an Aboriginal language).....

(English Translation)

(Can't hear) It's for everybody.

Mr MARIKA: (Speaking RIRRATJINGU LANGUAGE).....

(English Translation)

It's lunchtime.

Mr WAKURATJPI: (Speaking DJAPU LANGUAGE)

(English Translation)

Tell these Balanda people.

Mr MARIKA: It's about the constitution. We are looking forward to seeing them, meeting again and talking again, okay. We'll call you back when we get all the people to come wherever to Yirrkala or homelands and talk more. That was a good talk. We are beginning to understand now. All right? If there is different talking, and different ideas we need to keep on talking until we can balance it.

Mr HATTON: Thank you very much. It has been a very good meeting.

CHAPTER 3
HANSARD TRANSCRIPTS OF PUBLIC HEARINGS
KATHERINE REGION

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

DAGARAGU — Monday 13 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Billy BUNTER
Mr Mick RUNGIARI
Mr Gary CARTWRIGHT

Also present:

Peanut PONTIARI
Wonga BILL
Marianne YUNGA
Mona COOK
George NIDGI
Michelle DONALD
George EDWARDS

Smiler CUDDAH
Roslyn FRITH
Nancy FRITH
Jerry RUNGIARI
Topsy DODD
Ray DUNCAN
Kathleen DUNCAN

NOTE: This is a verbatim transcript that has been tape-checked.

Committee introduced by Mr BUNTER.

Mr HATTON: Thank you very much. I am Steve Hatton. You have all got this book. Our committee is what we call a select committee from the Legislative Assembly in Darwin. Wesley, myself and Brian Ede are on it. There are 6 of us on that committee. You can see it on the back there. There are 3 people from the Labor party and 3 from the CLP on this committee and our job is to prepare a draft or a first go of a constitution for the Northern Territory.

You know there has been a lot of discussion and argument about whether or not the Northern Territory should become a state. Some people think we should become a state quickly and some people think not yet, maybe later. There has been a lot of argument about that. What we all must understand is that one day, whether that day is next year or in 5 years time or in 10 or 20 years time, the Northern Territory will become a state. When we become a state we are going to have to have our own constitution. It is like when Dagaragu goes to set up a council. Before you can set up the council, you have got to sit down and talk and discuss and make a constitution for the council. You have got to get that first before you can even think about becoming a council, haven't you? Well, it is the same thing with becoming a state. It is our job to work on that drafting or writing of that constitution for the whole of the Northern Territory.

There are really 3 steps in doing this and we are just doing the first step now. The first step is that we are going around and talking to all the people, all around the Northern Territory. We have come to Dagaragu to explain what we are doing, why we are doing it and why it is really important for you as a community to think about what we are saying and think about what you want written into the constitution for the Northern Territory so that, when we come back, you can tell us what your thinking is. This way we can find out what people think all around the Territory and bring people together and we have got to write something we call a draft constitution. It is our first go at it.

The next thing that we have got to do is make suggestions on how we form a committee of people from all over the Northern Territory who will take our work, look at it and say: 'Yeah, I like that. I do not like that. I like this in it and not that in it'. They do a redraft of that to prepare it and that is the second stage. That big committee we call a constitutional convention. It is a fancy title for a big committee of Territory people. They then prepare a recommendation or what they call a recommended constitution. Then, that goes out for all the people to vote yes or no on whether they want it. So it is 3 steps: Our committee does the drafting, the constitutional convention looks at it and the people vote.

What we are doing now is the first step. We are going around and saying: 'This is really important because one day the Northern Territory is going to be a state and, when it is, we are going to have our constitution'. Now is your chance to think and have your say about what you think should go into that constitution and also have your say about who you think should go on the constitutional convention, a committee of Territory people. We want you to bring forward your views so that, when we sit down to write, we can get as close as we can to what the people are thinking. This very important law will tell us what sort of a place the Northern Territory is going to be in the future. What sort of a Territory do you want? It deals with lots of important issues like your rights, your freedoms, and things that are really important for yourself and for your children and for your children's children. How do we protect your rights? Just like you do with the council. You

work out who can vote for what. You set your rights out. The same thing with this one which is for the whole of the Northern Territory.

We are here to tell you that this is going on and to answer any questions you might have. If you want to tell us what you think now, please tell us. Perhaps you just want to learn about what we are doing and go away and sit, think, discuss it within your community and come back when we come back later and we will get together later when we can talk again, when you have had a chance to work through and know where you want to go. We will be happy for you to do that too. It will be a law for all the people and we really have to get all the people to talk to us about it.

Mr RUNGARI: You want to get a constitution for everyone in the Northern Territory and assisting my people here. I think that even though the council is registered under the new government association. That should be, you know, the sort of definition ...

Mr HATTON: It is like your definitions.

Mr RUNGARI: Is it a different issue, that one?

Mr HATTON: No, it is the same sort of thing if you look at your council for Dagaragu and you take that and say, 'Okay, what do we write for the whole Northern Territory?'

Mr CARTWRIGHT: You could possibly compare it with when we use to be a council before and then we talked about that community government council. We talked with Hugh Richardson and Kirk Wheelan and Mike and a lot of other people and we talked about different rules within that constitution for this community. This is for the state. This is for all over the Territory.

Mr RUNGARI: For the Northern Territory state. It is what I am trying to get. Just give me a rough idea.

Mr CARTWRIGHT: We have had self-government since 1978 and there has been a fair bit still under commonwealth control. But now we are talking about statehood and the constitution for that state so that we can be the same as New South Wales or the other states. So Steve is asking us to go through this and there are those 3 steps.

Mr HATTON: We have lots of other books that we can give you to read about it too. This book here is small and simple. It is easy to read to start the people thinking about it. If you want to do more reading, look at that one. This was written from that. This has a lot more arguments for and arguments against different things. We can leave you some here. There is this one here which talks about the people who go on that constitutional convention and whether they should be elected or appointed. Make sure you have Aboriginal representation on that convention. There are lots of questions like that and, if so, how we do that. We need to answer those questions to make our recommendations to the parliament. There are other important questions too that people are very interested in like land rights and national parks, mining and things like that, all of which are important for people to think about.

Mr CARTWRIGHT: With those 3 steps, is there a time frame that we are looking at?

Mr HATTON: We have never set a time frame. We are a select committee of the Assembly and so we are a one-off committee. It is not a standard committee. We are supposed to report to the parliament by 28 April next year. We would like to be in a position to provide our report by then, but we have had that 12-month time limit now for the last 3 years. We just keep extending it if we have not got the job done. It is just too important. We are not running on time; we are running on communities. I would like to be able to present a report next year but, if we have not done the job properly by then, we will just get an extension of time to do it. It is most important that we do this properly. It is not a matter of how fast we do it. We must involve everybody in the Territory. It is important. If we do not do that, it will not work.

Mr CARTWRIGHT: I am glad to hear that there is no time frame because there are a lot of other issues that we are trying to have introduced, mainly the health policy and a few others. Before we are first consulted, we usually have a month to 6 weeks and then you can have proper input into such important issues.

Mr LANHUPUY: That is why we are going out to as many Aboriginal communities as we can throughout the Northern Territory, talking to them generally about this in order to start people thinking about it, talking amongst themselves as widely as they can. Discuss it with some other communities and see what they think about it and then come back and talk to us. If you want us to come back, we will do that because, from our point of view, I think it is important that we get as many views as we can on this thing before we can start to say to parliament that this or that is what we think should be done..

Mr RUNGARI: Yes, to my understanding, you are coming in with ideas and that it is very important for these poor people in the Territory to pick up themselves. This is only new. This is not been happening before. There are a lot of ideas that we have to think about. Our people, we have to tell them that this or that should be in the constitution, things like land rights.

Mr LANHUPUY: If we make that rule now and in 5 or 10 years time include it in the law, it is going to affect our children. And the only way that law can be changed is if the people in the Territory vote for it. Those are the ideas that you put into this constitution.

Mr RUNGARI: In fact, I reckon that, if we really think about it, we might be able to answer. You know, write to you mob living in Darwin and just say: 'Yeah, that is all right'. Because a lot of ideas are coming in and we might be trying to live with that constitution ...(Inaudible).

Mr HATTON: What the constitution does is that it starts to say what sort of shape, what is the Northern Territory going to be like in 10 years time for our children and our children's children. What is it going to be like for them? It is up to us to start writing the rules to make that future society. It is very important. We cannot rush. We have to think and not just for this group of people in the Territory, but for everybody. How are we going to build something so that we can all live together and make the place better for everybody? How do we learn to live together, work together? How do we fix up arguments between each other? How do you want the Northern Territory to be for everybody, Aboriginal and non Aboriginal, everybody?

Mr RUNGARI: Well, everybody living in that Northern Territory.

Mr HATTON: That is right. We are we going to work out how we make the rules to make that better, stronger.

Mr RUNGARI: Yeah, not only for Europeans but for all people in the Northern Territory because we live in the Northern Territory. How do we make this Territory better for our children? I guess this is the best way to go, I reckon. I think, in my opinion, it is the only way to go. It is the best way. You know, talk with our people here to make them understand.

Mr HATTON: Yes and maybe next time when we come around again we can sit down and you can write down the sort of things you want. But, it is always better if you talk, isn't it? See us man to man, face to face, and you can explain why you think that way. Maybe when we come next time, rather than rush like this, maybe we get people from all over the place who are in the district and bring them together and we talk for 2 or 3 days.

Mr RUNGARI: I think that we have got to get blokes here like me. We just got to get the best way to go. What rule will be in the Territory, that is it. We will have to stick to that rule, because they mean what they say, for our children.

Mr HATTON: We are starting to make laws for our children, aren't we? We have got to get them right. It has taken 3 years work to get this. I am going to flick through it and just go through a few issues.

We talked about what the constitution is. The thing to ask is what sort of things should go into a constitution and it talks about that. There are 3 separate basic things in a constitution. There is what we call the legislature, the parliament. You have one of the rules around the parliament and it is asking questions here. Should the parliament of the new state have the same powers as the state parliaments in the other states? Should there be only 1 House of Parliament or 2? In the federal parliament, the Commonwealth, they have got 2 - the Senate and the House of Representatives. In the Northern Territory, we have only got the one at the moment. Do you want to have 1 or 2, an Upper House and Lower House? Do you want to have what would be like a Northern Territory Senate? That is one question.

Should you write into the constitution for the parliament to be for 3 years or 4 years or don't you write that into the constitution? What sort of a parliament do we want? There are many question that we have to ask ourselves.

Mr CARTWRIGHT: The other states have already got a constitution over there. Because we are going into it, should we be looking at similar things that other states did or have we got some special needs?

Mr HATTON: They can be different.

Mr CARTWRIGHT: Or should we make them different?

Mr RUNGARI: I think that if that constitution is in Western Australia or South Australia or maybe Queensland, we have to think very hard.

Mr HATTON: That might not suit the people of the Northern Territory.

Mr RUNGARI: No, we have got keep different ways again for this constitution.

Mr HATTON: Those other constitutions were written 100 years ago.

Mr RUNGARI: Right.

Mr HATTON: A lot has happened in the last 100 years. A lot of differences.

Mr RUNGARI: Apparently, we think a state has a lot of ideas about it. Not the same as a constitution written here. They must have a lot of different ideas because they live in Western Australia, Queensland or South Australia.

Mr LANHUPUY: All the other states like Queensland and Western Australia have already got their constitution and they have got their statehood. Just 10 years ago, we received self-government in the Northern Territory. What the government wants now is to give the people the opportunity to talk about constitutions so that we can clear the air, have our own state and have the same powers over land, minerals, law, services and other things like other states have. At the moment, we do not have that. That is why we hope with this paper we can ask the federal government for it. If the people of the Territory vote and say that they want a constitution, then we can go ahead and have it.

Mr HATTON: It is a bit like when you were a child. Your parents and adults guide you, help you and teach you. You grow up and become an adult and then you make your own rules. You have then got to make your own decisions. It is the same going from being like a territory to becoming a state. It is like growing up and becoming an adult or a man. Going from a child to a man or from a child to a woman. They take on rights and responsibilities. We have got to write those rules for our place. I do not know whether you want to go through these bits and pieces.

Mr RUNGARI: Thank you for coming and telling us because of new ideas and new rules and new regulations. I think that we can look at what is written here. That might help to give us ideas.

Mr LANHUPUY: What we do is we just stay around talking to you all. We will present this to parliament and say: 'These may be the things that you mob want'. Then, the parliament holds a big meeting. That is where you work out what kind of rule you want. After agreement, then it goes to the people for voting. If you want that constitution, you will vote yes. If you do not want it, that's it. That referendum decides whether we have this one or not in the end. But it has got to be the voice of the people in the Northern Territory, the whole lot. That is why we are going around to say: 'Look it is here. It is going to happen. We want you mob to talk about it now and give us ideas'. We hope to come back again one of these days. It is a long process. There is no time limit. It is not going to happen in 5 years time or 10 years time. We hope it will happen when people of the Territory are ready for this law and if you want it.

Mr BUNTER: (Inaudible).

Mr HATTON: There are other things they are talking here. You know the ministers in the government? You have to work out how they should choose the ministers. That is one matter you write into a constitution. And the courts. Should the constitution say something about the courts

and the judges and how they should work, those sorts of things? Should there be something written into the constitution to protect community government, to give you some constitutional protection so the government cannot come in and say no more community government? It can give protection against that. The constitution can do that. That is one way to do it.

Do you think we should be writing special things on human rights into the constitution, like a Bill of Rights? Some people think it is good to write it in a constitution and other people think it is better to not put it into a constitution because there is better protection elsewhere. These are questions that we have got to talk about like like freedom of speech etc, your freedoms, your rights, Aboriginal rights. Should the constitution say something about land rights? Should that protect land rights? Or are there other ways of doing it? There are lots of questions like that.

Do you think the constitution should say something about recognising the special position of Aboriginal people in the Northern Territory? For example, should it provide special protection for Aboriginal language, Aboriginal culture, your Aboriginal law? Should we write something into the constitution to guarantee protections for that? All those sorts of things are the sorts of things that, when you write the constitution, you have got to think about and say, 'Yes, we do this' or 'No, we don't want that' or 'This is really important and it must be there'. And they are the big issues that are not going to be fixed up quickly. We have got to start talking about them and, if together we can work out how we want it to go, then maybe we will have a much better Northern Territory for everyone because we will have worked it out together. And that will be the first time ever, won't it?

The other thing I think is really important when you are thinking about these things is that you should also think very carefully about how we should put together this committee of Territory people that I talked about. There is a paper here about that and not many people are thinking about this. They think that they want to look at what goes into the constitution, but I think it is just as important because you have to make sure that you have good representatives on that committee. You want to get the right people on there and so you have to think about how we go about doing that. How many people should be on that committee? Should it be 50, 60, 40, 100? And what sort of things should they be looking at and do we elect them or do we have somebody appointed from different areas? Your community here may send somebody along. Or should we have an arrangement whereby all the different Aboriginal people can come together and choose some Aboriginal representatives to go on that committee and where they can go back and talk to their people and come forward again in the discussions? I do not know the answer. I am just asking you the question. They are the things we have to think about too so that, in the end, you will feel happy and I will feel happy that what we have done is that we have really got something that all the people want. When we look at this, we must think that it has to be something for Aboriginal people and non-Aboriginal people together. Not just one side against the other side but how we get something for both.

Mr BUNTER: We are just saying that the view is to leave it there and ... (Indecipherable) ... later on when they probably have a total community ... and pass on to the council ... write a letter. It will take a while to pick up some of these new ideas.

Mr HATTON: As I said, it will take time for the people to think it through. It is important. We will leave those extra books here for you too so that is you have more detailed information. It might deal with some of the issues that are just roughly treated here and deal with a little more detail

in there. You can just take out and discuss a particular section and it also gives you some of the reasons why some things you can do and some things you cannot do. We have got to fit in with the federal Constitution too. We cannot do away with the government. You have got to have a government because Australia has got this monarchical system and so on.

Mr BUNTER: Well that can help us more.

Mr HATTON: We will leave you plenty of these ones anyway to start off with. We will forward to your community these ones too because I think you might find those useful. This is some of the general background information. All of these papers have been through the committee and so they have the support of the committee - both sides of politics. There is no party politics in this one.

Mr BUNTER: We have to go through it step by step because it is new.

Mr CARTWRIGHT: Billy was just saying we have not got many questions at the moment.

Mr HATTON: That is fine. I would just like to thank you very much for giving us the time to come and talk to you and at least explain what is happening. I look forward to getting back here next time and see if we can organise a way we can spend more time to do it. The Northern Territory is a big place and they want us everywhere all at once which is very hard, so maybe there is a way you might want to think among yourselves and the other councils. There might be a way we can start to bring more people from around the districts - like the land councils do to bring everyone together - and we can then spend a few days. We are happy to do that too. Whatever is the best way you think for us to talk it out.

Mr CARTWRIGHT: We will start circulating these books and there will definitely be a lot of questions. We will read those.

Mr HATTON: You will find them interesting actually. Thank you very much for your time.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

LAJAMANU — Monday 13 March 1989

PRESENT : —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Mike PRESS
Mr Martin JOHNSTON
Mr Mark RAE
Mr Jerry JUNGALA
Ms Christine NICHOLLS
Mr Harsh PRABHD
Mr Gordon HALLIDAY

Ms Jeannie HERBERT
Mr Paddy PATRICK
Mr Lindsay HERBERT
Mr Ron ANDERSON
Mr George JOHNSON
Mr Phil PRICE

NOTE: This is a verbatim transcript that has been tape-checked

Mr HATTON: Gentlemen, I formally declare this hearing of the Select Committee on Constitutional Development open at 11.15 am. Thank you very much for coming to meet us this morning. I know it is inconvenient when you have people coming in and out of the community all of the time and, every time people come in, they want to meet the community, they want to talk about this or that or something else. I guess that, to a lot of you, we are just another mob from the government who have come down here to talk about something else. You do not know what we want to talk about and where we want to go.

But, if I could introduce myself, my name is Steve Hatton and I am the chairman of this committee. Wesley Lanhupuy, the member for Arnhem, is a member of the committee too. We are both in the Legislative Assembly of the Northern Territory. This committee has both Labor Party and CLP, both sides. It is not one side or the other, but both sides of politics together. We are not arguing with each other about this one. We are trying to talk together and find a solution. Our job is to write a constitution for the Northern Territory. That book that I gave you is just a bit of an explanation about what a constitution is and what it does. We have done a lot of work and we will leave some other books behind for you later which have got a lot more complicated material in them. That book there has got all sorts of arguments for and against different things in the constitution and there are 2 other books there. We will leave those behind for people to read in their own time and just think about it. Our purpose today is to encourage you as a community to start to think about what sort of things that, one day, you would like to see in the Northern Territory's constitution. When we come back next time, you will have had a chance to think about it and to come up with some ideas and you will be in a better position to tell us what you think.

It is the most important thing that is going to happen in the Northern Territory for a long time. Now, I know there are a lot of people who think that we should become a state. Other people think that we should not become a state yet and there is a lot of argument about that. We are not asking you that question. We are not asking you whether you think we should be a state now or not. But what we all must know is that, one day, whether it is in 2 years time or 10 years time or in 20 years time, the Northern Territory will become a state and, when we do, we are going to need to have our own constitution just like when Lajamanu became a community government. You had to sit down to work out a constitution and how you wanted your council to work. I understand now you are working to adjust it because of some problems you found with it. You talk through as a community and try to work out how you want your community government council to work. It is the same with a state or with Australia. We have to have our own constitution too that says what our rights are, how the parliament works, what the judges can do and all sorts of rules that say how we want the Northern Territory to run in the future. Our job is to try to move towards writing that.

We are only doing the first part of 3 parts. Our committee writes what we call a recommended draft constitution. Then, that and all the things that you tell us and all the background papers will go forward to what we call a constitutional convention. That is a meeting of maybe 50, 60 or 70 people from all over the Territory. It is their job then to look at what we have said. They might like some things and not others and say: 'Okay, we want this and we do not want that'. They then write the final constitution and everybody in the Northern Territory then gets to vote on it. There are 3 steps. And we are only working on the first step now and trying to get as close to what the people want as we think we can. That is why we are travelling around the Northern

Territory, coming to the communities, talking to people and asking them to think about it, ask questions about it or, if they have some ideas, to tell us about them. Tell us about them because that is going to help us to do our job. I am not going to talk too much longer. Wes, maybe you would like to deal with some of the issues that we are trying to get some ideas on? If I could just leave that with you, you might have some things to ask us about later.

Mr LANHUPUY: Thanks, Steve. Thanks for coming, Mr Chairman. I think it is important what Steve said. The first aim of this committee is to go around and to talk to as many people as possible right across the Territory to get their ideas on what sort of law we should have in the Northern Territory. If we as members of parliament sit down by ourselves and make laws for you that do not have your agreement, we will have arguments for a long time, especially Aboriginal people. That is important. That is why I said last week to Vince that as many people as possible should come in here so that you can express your views to us. We can always come back and talk to you more about it. This paper gives you an idea of what this committee wants so that you can talk about it, go back to you communities and, if you want this committee to come back at a later stage, we will try to come back and get your views.

That is important because it is going to affect our lives. Whether we like it or not, one of these days, we are going to have a state, a constitution for the Northern Territory - a law that will affect our rights, including our lands. That is why it is important, especially for Aboriginal people throughout the Northern Territory, to make sure you express your views. You should talk to people like Steve and me and, when we come back next time, you will talk again to us. It is very important because, like Steve said, it is not going to happen next year or 2 years time. It might happen in 10 years time, but it is going to happen. That is the important thing and therefore our main aim is to get this paper to you mob so that you can talk about it. Get back to us, ask us any questions and we will try to answer them for you. We can always come back and talk to you a bit later on. I think this meeting is now open for any discussions.

Mr HATTON: Any questions at all? Perhaps I could ask you a couple of questions, maybe just to start you thinking. If I said to you, do you think that the Governor, who is like our Administrator now, should have the right to sack the government? Do you reckon he should? If so, under what conditions?

Mr PRESS: (Inaudible).

Mr HATTON: In other words, if he loses the support of the parliament.

Mr PRESS: Yes.

Mr HATTON: Those are the sort of basic questions that are going to lead us to writing the rules. What is the role of the courts? Should you have one House of Parliament or 2? Should you have an Upper House? Can I give you a couple of things that have been going through our minds. One thing that was talked about is whether there should be special Aboriginal representation in the parliament. There is no doubt Aboriginal people have got a special place in the Northern Territory. You were here first and we have come in later. In New Zealand, in their constitution, they have a couple of seats that are specially for Aboriginal people to have their representation in parliament. They have special seats for Maoris. One question that we have been asked is whether we should

be the same in the Northern Territory. In New Zealand, the Maoris have a choice. They can either go on a special Maori roll to elect Maori members or on the general roll to elect members as we do now. Thus, there is a plus and minus with both things and that is why you need to think about it.

One question is land rights. Should the land rights be written into the constitution? At the moment, you have got it in an act of parliament.

Mr LANHUPUY: The reason why we raise land rights is because it is something that we Aboriginal people feel very pleased about. We feel very deeply about having land rights here in the Territory. That is one thing that this constitution is asking. Should all land matters be looked after by this new constitution or should it be an act of parliament? At the moment, it is an act of parliament only and, if the parliament wants to wipe that land rights legislation off, it can do it. If Aboriginal people say to this committee that they want land rights in that constitution, a book that will give us rights to land for years and years, something like the Indians have in America, that is another important thing that we want people to talk about because it will affect us in the Northern Territory. There are other powers that the government is trying to get - powers for uranium, self-government ...

Mr HATTON: The same as other places in Australia.

Mr LANHUPUY: Like other places in Australia that have already got those powers. In the Northern Territory, this government has not got them and that is why we are going around to speak to you all to see what you think we should have in this book of rules for the Northern Territory.

Once again, I will just say that it is important that you talk to us because, if that law goes ahead in 5 or 10 years time and you all say, 'Sorry, we did not have anything to say in that', you will have missed the opportunity. Now is your chance to give your voice to us because we will be going to a lot of people throughout the whole of the Northern Territory to get people's views on this before we have a big conference involving lawyers and others. Then, it will be time for all of you to vote on whether you want it or not. When we go, we will leave some papers for you to talk about, also to get in other people that you might want advice from, and discuss these matters.

Ms HERBERT: (Speaks in an Aboriginal language).

Mr JOHNSTON: One question I would like to ask right now is that the constitutional act is in the parliament in Canberra, but there is no constitutional act here. We do not understand at all. If the constitution comes down to the Northern Territory government, people are still worried. For sure, it will be the first time for the Territory government to have the statehood, for that government to have the power to the run that Land Rights Act. We are saying now that that act that is right now strong up in the parliament in Canberra, when it comes down to the Territory, are we still going to have that same act? Is it still going to be strong in the same way?

Mr HATTON: Firstly, the constitution thing. In Queensland, they have got a constitution too. Western Australia has got a constitution. Each state has its own constitution and then the whole of Australia has got another one. There is a big constitution for the whole of Australia and then there is one for each state, except the Northern Territory. We have not got one at the moment

and that is what we are working towards. So there are 2 levels of constitutions and we have only got the Australian one.

Now, in relation to the land rights, your land rights will still be there with statehood. Now everybody is saying that. The CLP is saying that and the ALP is saying that. Both sides are saying the same thing. There is a book here that was written 2½ years ago dealing with land matters and it says very clearly. Land rights will stay and, no matter who is in government, we will keep land rights. We will guarantee that the people will keep their land.

People ask what sort of things should go in the act and how strong it should be. What the Northern Territory government has been saying is that it wants to go and talk to the Aboriginal people and ask them that question. Do they want the act exactly as it is now or do they want some changes to make it better? We do not know whether there are things in the Land Rights Act that Aboriginals think should be changed. We want to go and talk to Aboriginal people and ask them whether they want the same land council structure or a different one? Do they think they have the right say over their land? There are all sorts of questions but, in the end, as Territorians, Aboriginal and non-Aboriginal, together we should be working that out so that we live together in the future. No one is saying that there should be no land rights. Everyone says that land rights are there and your ownership of your land is protected. You keep it, but the question that we are asking is how you want to manage it. Do you think the Land Rights Act is perfect? Do you think the one that you have got now is perfect? Is it exactly how you want it, I do not know?

Ms HERBERT: We think it is okay at the moment because politicians are listening to the wishes of the Aboriginal people. In terms of consultations with the mining company and all that, I think Aboriginal people should have a say in the royalty money and all that because it is Aboriginal people's land anyway in the first place.

Mr HATTON: No one is disputing that. We are saying that we just want to talk to Aboriginal people about that. That is all. We are not saying that we are going to take away what you have already got. There may be ways that it can be strengthened for you.

Ms HERBERT: If it does become a state, I know it will be changed.

Mr HATTON: Why? We are not saying that.

Mr JOHNSTON: You just said that every state has its own constitution. If the Northern Territory became a state, you could change that because it is a state itself with its own constitution. That is why we have not been sure about now. You are saying that every state has its own constitution and this might change. We cannot guarantee it.

Mr HATTON: That is why one of the questions that is being asked in this book is whether you want to get the protection, the guarantee, by writing something into the constitution to give you that protection. It is not in the federal Constitution now. Right now the federal government can change the Land Rights Act. It does not have to ask your permission to do it. It can change it tomorrow, just like that.

Ms HERBERT: If it gets written down, will you go round and visit all the Aboriginal people and sit down and talk?

Mr HATTON: Yes, that is what we are talking about doing. That is what we are doing now. We raise all these questions now so that you can hear and also you can tell us what is on your mind.

Mr PATRICK: Yes, but if we become a state, you might do a similar thing as the federal government can do. If the Territory becomes a state, you will have full control.

Mr HATTON: No, not full control. The federal government still keeps the power that it has now, like it has for the rest of Australia. We still stay part of Australia and there is still a federal government. There is still a federal DAA and it is still providing those services here, like it does everywhere else in Australia, to our states. It still provides services there.

Ms HERBERT: What about in terms of land rights. Can we still have the federal government to have the Land Rights Act?

Mr HATTON: I think it would be better back in the Northern Territory for a lot of reasons which I can argue about. But, what I am saying is one way - and I do not know whether that is what the Northern Territory people altogether say - to guarantee protection of your land rights is to put those rights into this constitution and then the government cannot change it.

Ms HERBERT: Do we have to?

Mr HATTON: What?

Ms HERBERT: Do the Aboriginal people have to put it in the state constitution, can't they have it with the federal government?

Mr HATTON: I think it is going to cause problems for you if you do, as it is causing problems now. Put it this way. Suppose I take the Land Rights Act now and I make that exactly the same words and it is a Northern Territory act and the federal government says, 'You can have that act, but you cannot change it'. If they said that to me, it would still be better and I tell you why - because it is with a Northern Territory act. When it is a federal act, a Commonwealth act, it causes lots of other problems. There was a situation out in your electorate last year, Wesley. A person was on a speeding charge in Milingimbi or Maningrida. He was speeding through the town and the police booked him. He got off because it is private land and not a public road. So we were having difficulty providing laws to protect the people in the community from speeding and all sorts of other things because it was Aboriginal land. All of the Northern Territory laws get mucked up in how they operate on Aboriginal land. That is true. Half the fights in the courts are trying to work out whether this law applies or does not apply on Aboriginal land.

Ms HERBERT: There have been so many arguments - look at Uluru and Kakadu and all those places - between the government and the federal government.

Mr HATTON: Yes, but that is not over whether it is Aboriginal land. What it is about is whether it should be run by the federal government or the Northern Territory government because everywhere else in Australia those parks are run by the state government and not by the federal government. That is what the argument is about, not Aboriginal people.

Mr RAE: But, in terms of our mining, the federal government has taken most of the money out of it anyway, isn't that so?

Mr HATTON: The federal government is taking virtually all of the money out the mining away from the Northern Territory people. It takes all the uranium royalties, the Nabalco royalties, most of the Gemco royalties and for that offshore oil and gas in Bonaparte Gulf. It will take the royalties for the gold in Coronation Hill if that ever goes ahead. The Goldfields - it takes all of those royalties.

Ms HERBERT: What will happen if the state comes into force, will they take all our money too from mining?

Mr HATTON: No, that money will then come back to the Northern Territory for us to be able to spend on Territory people.

Ms HERBERT: At the moment, there are foreign people working there and all of that and foreigners being employed. Will there be a guarantee of employment and all that for Aboriginal people too on their land?

Mr HATTON: I cannot give you that guarantee. I would not be telling you the truth. Remember that, in the federal government, there are 154 seats in the parliament and only 1 seat is a Northern Territory seat. In the Northern Territory government, 25 seats out of 25 are here and you have got more say over what we do because you can kick us out. The Northern Territory just does not have the numbers to influence the people with the power, but you have the power over the Northern Territory government. That is your best protection because it is your government. Whether you like who is in power today or not, it does not matter; it is still the Northern Territory people's government. And that is the only protection that you have got, because you vote.

Mr HERBERT: Well, I think the Aboriginal people today are worrying about land rights, whether it is the existing land rights or whether it can be made better in the way that Aboriginal ... (Inaudible) ... that is all the Aboriginal people are interested in ... (Inaudible) ... if the Northern Territory government becomes a state, that something could go wrong after that. We want that protection.

Mr HATTON: You should have a look at that book and, in fact, these ones. I do not know whether we have got any with us, have we? I will send some of these down to you. They must have been sent here before, but I will send some more of these down here for you to have a look at because that one deals with the land rights. There are lots of words there, I know. That one deals with mining and that one deals with national parks. And they all refer to guaranteeing land rights to people. All say that. We all believe that. The question is that you tell us now how you want to get that guarantee written in. That is why we are going round talking to you. How do you want those sort of guarantees?

Mr HERBERT: Well we want to be protected.

Mr HATTON: I accept that. Now we have got to think about how. And that is where, if we can get the communities to talk and think about that and then come back and tell us how, what they are thinking, then we have got a chance to start to write it up for you. Then, it comes back to

you to have a look at whether you think we wrote it up properly. That will take a long time. It is going to take a lot of work. We want to encourage you to be involved and have your say and bring your views forward. We have to talk to all Territory people, Aboriginal people and non-Aboriginal people, and try to work out how we are going to make this Northern Territory work for everybody properly in the future. How do we protect people's rights? How do we make a Territory in the future that we all want to live in and be proud of. That is what we are working for: to find a way, maybe through this, to solve a lot of the arguments that are going on between people and get people to work closer together and live closer together. It is a big job and we cannot do it without your help.

Mr JUNGALA: So the Northern Territory government has not had its own constitution?

Mr HATTON: No.

Mr JUNGALA: And it asking now for a new constitution. That means ... (Inaudible) ... idea on land rights. So you want to take the Land Rights Act through to the constitution?

Mr HATTON: Well, that is one way. Many people, and I think some people here today, are saying that they do not trust the Northern Territory government with the land rights. Is that the truth?

UNIDENTIFIED VOICES: Yes.

Mr HATTON: Right. Let's put it on the table. They are saying: 'We are a bit nervous about this statehood and about everything because we just don't trust the Northern Territory government'. Now maybe one day this man will be in government. Would you trust him?

UNIDENTIFIED: No.

Mr HATTON: No? Right.

Mr PATRICK: Everybody in the parliament. We don't really know their background ... (Inaudible) ... and so we don't trust anybody. The same applies not only for Aboriginal members but for people like Bob Collins where he is promising airports in Darwin and Alice Springs. They have been going on about that for years now and that is the Northern Territory representatives in the government. Just by looking at those things in the paper, well we get the same idea with the present government now and for the government which might want to change these constitutions.

Mr HATTON: Okay, you do not trust us. I understand that. I have been hearing it for years, so it is not new to me. But, okay, you say: 'Look, I want to make sure you cannot go back on your word. How do I make sure you cannot go back on your word?' Well, there are several ways. You could say with the federal government that that act cannot be changed unless the federal parliament agrees to the change. Another way is that you put some of your rights inside of this constitution and the only way this constitution can be changed is when everybody in the whole of the Northern Territory has to vote on it. So it is not up to the parliament. It becomes stronger protection then, doesn't it? If you had in there that you cannot change anything about the land rights

without a vote of the whole people of the Northern Territory and, even then, you could say maybe it has to have three-quarters of the people vote for it. You can write those things into a constitution and that gives you better protection than just with the federal parliament. What if next time, say, John Howard gets elected?

Mr PATRICK: The Land Rights Act when we had that - who is that man? He is not here now. He is the foreign ... Who was that fellow? That bloke was in power. Whitlam. He changed a lot of things and they got that in the constitution and it is there, right? You cannot change it back. That is okay. But, you see what you do now. You people come now and that was not done before. We did not have people from parliament coming asking for opinions like that, telling us what is happening in a state or what will happen in the future for Australia. I think it is beginning but we do not know many people who are in parliament. That's why we cannot guarantee or we don't really trust these people. That is why we have got to be very careful. If we are going to change the constitution, then we have got to be really sure and know these people and know the government. Because, at the moment, why we are saying some of these things - some place they will find gold, right? Like Granites. The state want it, the federal government want it and the people want it. So it is a fight all the time. Some people they talk more ... (Indecipherable) ... who we can trust.

Mr HATTON: And that is why this is going to take a long time. But we have got to start talking one day, haven't we?

Mr PATRICK: It is going to take long time.

Mr HATTON: Sure, but we start talking now and maybe we do get to know each other and find out how we can do it. I agree with you that it is going to take a long time. The people in Darwin say the same thing to me.

Mr JOHNSTON: Do we have any rights after? Right now you have got the present government telling the Territory that statehood will go ahead and people want the constitutional change and maybe we got opportunities now to say, 'Okay put that in and statehood will go ahead', and put that government in now. But, after that government finish, what happens to the next government? Will that constitution change then or do they have to come back and see us?

Mr HATTON: Well, you can write rules into the constitution on what they have got to do to change it. You can write in that they have got to come out and talk to people and that you have got to vote on whether it changes. We recommend in that paper that they put a clause, a condition, a rule, in the constitution that says that the only way they can change it is when everybody in the Northern Territory votes and the majority of people in the Northern Territory say that the change is okay.

Mr JOHNSTON: Right now, this present government now is calling round asking Aboriginal people in each community for the statehood to go ahead and that this is our opportunity to say what we want in the constitution, whether we like it or not. (Indecipherable) ... to say our ideas now, instead of saying maybe 2 years time, or maybe 10 years time, but still we are going to have the statehood here. Still we are going to have our government who will run a lot of things in the Northern Territory for us. We are going to rely on parliament all the time if the Territory government has that constitution here. But, it is true - we are confused and maybe we do not trust each other.

Mr PATRICK: At least be honest, you know. If we can work along and have that in the constitution, that is okay. One idea that we come up with is that whatever we write in the constitution, maybe for that next election we want that government to come back and see us again to make that constitution is stronger and better for us. And that is one of the things that we want.

UNIDENTIFIED: Might get an idea of Indian people and their land ...

Mr HATTON: I want to go over to America later this year. I want to go across there in about September to have a look at what is going on with the Indian rights in Canada and America and Alaska for the Eskimo people, just to see what is happening over there and just learn a bit more about it.

Mr PATRICK: Excuse me, would you have people like Wesley going? Yes, I think it is better off having ...

Mr HATTON: I am happy for Wesley to come along with me. You want to go to America?

Mr PATRICK: Why I am asking this is that you have got to have some representative of Aboriginal people to go so that he talk to us. We must have someone there.

Mr JOHNSTON: Yes, some representative to represent Aboriginal people if you were thinking about going to America.

Mr HATTON: I am thinking of learning too for myself. I am trying to learn. I am trying to understand a lot of the issues and what the arguments are, what is happening. People tell me what is going on in America and Canada and what is going on in Alaska and I want to go over there and talk to the people so that they can tell me and I can see. I want to learn. I like to get around and talk to the people around the Northern Territory for the same reason.

Mr HERBERT: Yes, this here ... (Inaudible) ... the federal government and the state government. What protection are Aboriginal people going to have against this government for land rights. We need really strong support on that one to make it really successful for Aboriginal people for ...

Mr HATTON: What you want is something that is going to protect what you have got now, protect your rights, so no one can take them off you.

Mr LANHUPUY: That is one of the reasons why we are going around to tell Aboriginal people that, if we want our land rights in this constitution, we can ask for it. That way the parliament alone cannot change that act. The whole of the people in the Northern Territory have to vote to have that change in the constitution. At the moment, it is just an act of parliament and, if John Howard gets in federal parliament, he will say, 'I will give this to the Northern Territory mob', our Land Rights Act, and there is nothing we could do about it because it is just an act of parliament. He cannot do it if that federal legislation is in the constitution. We people in the Northern Territory would have to vote before any change if that Land Rights Act was in this constitution. That is the type of protection that we are trying to give you mob to say that you can tell us to put it in the

constitution, not just have it as an act of parliament because an act of parliament can be changed by us mob.

Mr PATRICK: Like we are outnumbered by the others, right? That's what we are. We Aboriginal people are outnumbered. How can you guarantee that one?

Mr HATTON: Graham, you might want to get into this. There are ways that you can entrench elements in a constitution deeper than the normal clauses, aren't there?

Mr NICHOLSON: Special votes.

Mr HATTON: You can require special votes. If we want to write our constitution for the Northern Territory, we cannot go against the federal constitution but, apart from that, we can pretty well put in what rules we want. We can put special rules for special votes on some parts of it. There is no limit.

Mr LANHUPUY: You said Aboriginal people are outnumbered, but we are about 30% of the Territory's population. The constitution would not work if we do not agree. The whole lot of people in the Territory have to agree for this constitution to work otherwise we will have this fighting all the way. That is why it is important that we let you mob know about it and think about it and, if you want to have any impact on the constitution, put in what you are thinking now before it is too late.

Ms HERBERT: Sacred sites and all that?

Mr LANHUPUY: Well that is the sort of discussion ...

Ms HERBERT: Many Aboriginal people are not even enrolled. There might be a lot of Aboriginal people in the Northern Territory, but many of our people are not enrolled in the electorates. There are more non-Aboriginals enrolled.

Mr HATTON: Every time there is an election coming up, people come around and they run videos and education programs in the communities. They are going around trying to get people to get on the roll and they do it at every election, don't they?

Mr PATRICK: No, you should not work that way. You should get people on the roll and then, whenever there is an election, you have got everybody listed, right?

Mr HATTON: That is right. We do that but, for you to join the roll, you have to fill in a form. You only have to do it once and it stays on the roll all the time until you die.

Mr PATRICK: Yes, but this is always happening now. Some people are not on the roll.

Mr HATTON: Been taken off the roll?.

Mr PATRICK: No, they have not been listed.

Mr HATTON: So that is where the government tries to get out and the local members try to get out. The forms are here in the community. You encourage your people to fill the forms in and

get on the roll. They are allowed to. We want them on the roll. We have all got to work together to encourage people to fill the form in and then, when they are on the roll, they are there forever.

Mr ANDERSON: I would just like to ask a question. If the Northern Territory should ever gain statehood, apart from giving the state politicians greater control over revenue that you just mentioned, coming from mining, and the fact that there would be more politicians, what are the advantages to the white and black population? Secondly, would it mean a whole new series of state taxes would be imposed on the people who live in the Northern Territory? I come from Queensland. I am thinking about the Queensland government and how they raised petrol taxes, stamp duty taxes, entertainment taxes. If the Northern Territory should become a state, would we have to suffer a whole new series of state imposed taxation policies.

Mr HATTON: No, because they are already charging them to you.

Mr ANDERSON: We are already paying those?

Mr HATTON: Yes, you are already paying them. This is one of the great fallacies or misconceptions people have got about statehood. As of 1 July last year, the Northern Territory government's funding from Canberra is calculated exactly the same way as it is for the states, by using exactly the same formulas or methods of calculation and it comes out of the same Commonwealth tax-sharing pool of money. It is exactly as if we were a state.

The way they calculate it is that they look at every state and the Territory and ask how much money is needed to be able to provide what they call a standard range of services, like providing education, schooling, health services, policing, roads, all those sorts of things. How much money is needed for that? Then they determine a state's ability to raise money within the state or Territory if you charged an average range of taxes such as stamp duty, petrol taxes and all those sorts of things. That is your revenue-raising capacity and the difference between what you need and how much you can raise is what the Grants Commission recommends be provided to make everybody equal throughout Australia. That is why they set the system up.

Now that is happening to us today. There are no special deals on money at all. We have all the responsibility. We have the parliament and the public service and the court system are in place. The education services, the police force and the community health centres and the entire structure of state government are here, except for a few powers. Money is not going to be a factor at all. What is going to be different is that the Commonwealth government will not be able to override things here that it cannot override in the states. Some of your individual constitutional rights might not grab your heart strings but, because you live in the Territory, you do not have them. When we become a state or if you left here and went to live in New South Wales or Queensland, you would get them back. You are losing because you live here and I think that is wrong. It is important to me, but you might not think that.

There are other areas of government such as the management of the national parks, the rangers who are on the ground. Everywhere in Australia is run by their Conservation Commission except for 2 parks in the Northern Territory and that is why we have all these fights with the federal government about it. They are doing our job and we are saying that it is our job and that we should be doing it. We are responsible to the people of the Northern Territory. You are the ones who

vote us in and you are the ones who can vote us out. We have got to do what is in the interests of the Northern Territory people and managing the land, the national parks, should be done here, not by someone in Canberra or Melbourne telling us how to run our lives. What happens with mining? We will not get any more money either out of mining. We will have the same amount of money but more say over how it will be spent in the Territory. It is having a say over your own life. I do not know how you put that into words. That is sort of in there, isn't it? It is growing up. It is when you stop being a child and become a man, where you have a say in your own life rather than having somebody telling you how you can live your life. How important is that to you? It is important to me.

Mr ANDERSON: Pretty important.

Mr HATTON: But, please understand that what we are talking about is not those issues. I would like you to put myself, who argues for statehood, there and this committee over there. This committee is saying that one day that is going to happen. I do not know when, whether it is 1 year or 5 years or 10 years or 20 years. It will happen. Before we can even think about that happening, as a community we have to write a constitution. Before we even start to think about becoming a state, we have got to work out what sort of a state we are going to want, and that is what a constitution does.

Ms HERBERT: The federal government gave Uluru to the Pitjantjatjara people and Katherine Gorge to the Jawoyn people. Do you think that would happen with your government, the state government, if the rules are changed?

Mr HATTON: Yes, that will stay there.

Ms HERBERT: There have been so many arguments.

Mr HATTON: Let me tell you. We have said that Uluru, Kakadu, Nitmiluk will all stay Aboriginal land. We think that the lease back should be to the Northern Territory Conservation Commission, not to the Australian National Parks and Wildlife Service. The Jawoyn people have just entered into a lease back agreement with the Northern Territory Conservation Commission for Katherine Gorge, didn't they? Just last month. They are working with the Northern Territory government, not the federal government, and they want to work with the Northern Territory government. It is Aboriginal land or will be Aboriginal land, but it will be Aboriginal land managed jointly between the Aboriginal people and the Northern Territory Conservation Commission. It is not just there. Gregory National Park, just north of here, is not Aboriginal land at all but the Conservation Commission has been there talking with the Aboriginal people whose country it is and saying: 'Let's work together on managing this country'. The same with Keep River National Park, just north of the Victoria Highway, and with Litchfield Park. Gurig National Park on Cobourg is a Northern Territory park. In relation to Kings Canyon National Park, we are talking with the Luritja people and working with them. We are working for every Northern Territory park to be jointly managed by the Aboriginal traditional owners and the Northern Territory Conservation Commission, except Uluru and Kakadu. We did not have to do that. We were not forced to do it. It is not Aboriginal land most of it. We are doing it because we think it is the best way to do it.

Ms HERBERT: What do you mean it is not Aboriginal land?

Mr HATTON: I am sorry, in the white man's law. I agree with you. In white man's law, it is not Aboriginal land. I agree with you. I am not arguing your original ownership of the land at all. I am not disputing that. Please understand, I am not. I am talking about that, in the law, they say that is crown land.

Ms HERBERT: That's white man's law. But, as far as we see it, it is Aboriginal land anyway. It has been for 40 000 years.

Mr HATTON: I am not disputing that. I am not arguing with that. What I am saying is that, without being told we have got to do it, we are doing that. Aboriginal people are able to exercise their responsibilities for their land along with the Conservation Commission so we can work together. We are doing that all over the Northern Territory at the moment. But I know you do not trust us. I accept that. I am not disputing that. I am asking you to sit down and talk about how you think we should be writing the constitution to look after your interests too.

Ms HERBERT: I think we should start to talk about it. There is not much trust around at the moment.

Mr HATTON: We have a lot of talking to do, eh?

Ms HERBERT: There is so much talking to do with the Aboriginal people.

Mr HATTON: I agree.

And with all the people in the Northern Territory because it has got to be everybody's constitution. That is important. It has got to be for the non-Aboriginal people too. Remember we have got to find a way to determine how all of us want to work and to live together in 10 years and 20 years and 30 years time. How are we going to live together? Because all of us, Aboriginal and non-Aboriginal people, are going to be living here, aren't we? We have got to learn how to live together.

Ms HERBERT: This is the first time that you have come to us. It is the first time and it is great because it has not been happening before. It is great that people are talking together and talking to everybody about important things like that. Before it has not been happening. That is a good way.

Mr HATTON: We should do it a lot more, eh? Perhaps we can encourage you as a community to talk among yourselves about it, come up with some ideas. If you ever have any questions, if you want any more information on anything, there is a toll-free number in place and you can ring us up free of charge.

UNIDENTIFIED: We have not got a phone.

Mr HATTON: You haven't got a phone? Write us a letter.

Mr LANHUPUY: All that information is in this book. If you want any further information about this committee and what it is going to be doing over the next 5 to 10 years, you should be able to get it in this book. This bloke here will send you more books if you want. If you want us to visit

again, it is up to the community to let us know because we want to go through and make sure that everyone has a say before we get this law. It is no use us blackfellers fighting against whitefellers, because we all live in the Territory and we know it is going to happen. We will have this book one of these days and it is important that we talk and have an agreement among us all before this thing can become like a bible. It will be our bible for the Territory people, black and white, and it will give us the power and responsibilities of looking after ourselves in the end.

Before that becomes a bible, we have to agree about what we want in it, the laws and how they will affect us. If you mob want seats available in parliament only for black people, that is what the legislation will do. As Steve was saying, New Zealand has a system that gives the Maori people 4 seats in parliament. It gives them that right to have representation in parliament, but there is a catch to it. If you go on the general roll, you cannot vote for those Maori people. That is the sort of thing. If Steve goes overseas, he will look at those sorts of things in America, Alaska and those sorts of places. Once again, it is important that we talk about it. Any information that we can give, let us know.

Mr HATTON: We would like to come back.

Mr PATRICK: I do not think we should have that attitude of the fighting between the Aboriginal people and ... (Indecipherable) ... We are in the same boat. We have trouble with the same thing. (Indecipherable) ... That is the sort of thing that should be right for everybody. That is what we want to be sure about. It is not fighting really. We are in the same boat.

Mr HATTON: We are all part of the same Territory, aren't we?

Ms HERBERT: One of the things that should probably go in the constitution should be educating non-Aboriginal people about Aboriginal people, about our culture and other things. At the moment, there is no understanding between the European and Aboriginal people. We are still be looked down on for this and that. I think they should be educated to know us because there are more Aboriginal people in the Northern Territory. I think there should be some sort of a law or something to educate the children in the schools. There are so many misunderstandings between non-Aboriginals and Aboriginals. Something like that should be put in the constitution too.

Mr HATTON: I agree with you that there is a lot of misunderstanding and a lack of understanding of non-Aboriginal people about Aboriginal culture, Aboriginal history and Aboriginal aspirations. There is a lot of misunderstandings and I do not think we should wait for a constitution to do something about it. We should be working now. We are doing some things about it now. The best place to work is through the schools. The schools are more and more bringing in some education about Aboriginal culture and history. I know my children at school are learning about it. I think there is a lot more that should be done than is being done now but something is being done now. Most importantly, people should meet each other and talk. The school is the first place to start. We must start teaching at school about Aboriginal history and culture as part of learning about the Northern Territory, just like the Aboriginal kids are learning about the Europeans.

Ms HERBERT: They should learn about the Aboriginal languages and have Aboriginal people go there and teach children and students. I think that some would appreciate that.

Mr HATTON: I think we should be working on that in the education system.

Ms HERBERT: Yes, the education system and all the children in the Northern Territory.

Mr HATTON: I do not think that you want to wait until we have written the constitution to start doing that.

Ms HERBERT: I think that you can start it now because that is very important.

Mr HATTON: I agree.

Mr PATRICK: Now they are saying that we are ... (Inaudible).

Mr HATTON: I think it is starting but it is very slow. It is going to take a long time and there is no magic cure, is there?

Mr PATRICK: No.

Mr HATTON: Just a lot of hard work.

Ms HERBERT: We remember all the white people coming and teaching us foreign ways even before education came into force. European people used to come out here and just teach us all the foreign ways and all that a long time ago. We used to get punished for speaking our own language and those sorts of things. I think there should be some sort of thing about us Aboriginals in all schools to get a better understanding of all of us.

Mr HATTON: I agree.

Ms HERBERT: Steve, would you like to come and have a look at our classes later.

Mr HATTON: I would love to. We will have a talk to the kids too.

Ms NICHOLLS: Just picking up what Jeannie was just talking about, I think in some states of Australia, for example New South Wales, they are working towards compulsory Aboriginal studies courses in high schools. I just wondered if you had any comment about that. I agree that maybe that is the way to go, through the education system, but if you could just somehow put it into the constitution too, perhaps that would be a bit of a safeguard for the future.

Mr HATTON: It is an issue to talk about. I do not know the answer. I would like to think about it myself. What you are saying has been recorded and I can guarantee to you that it will be picked up. I would like to think about it before I was prepared to comment on that. I think there is something on Aboriginal studies built in the SACE core curriculum now.

Ms NICHOLLS: Yes, there is.

Mr HATTON: It has been developing. I do not know how significant a part it is. I think that is where my kids have run into it, but it is starting now in the core curriculum which is what I think you are talking about. For those who are not sure, SACE stands for social and cultural education.

Mr LANHUPUY: Just one thing to make it clearer to you mob. Remember when we were living in missions or settlements a long time ago, we had people like native affairs mob, DAA, and the Administrator in the Northern Territory making laws for us on how we planned our towns, how many jobs we wanted and they funded us for those things. Over a period of time, Aboriginal people throughout the Northern Territory got experience and started arguing with the people who used to look after us. We said that we wanted our own councils where we could make decisions for ourselves, not by that mob in Darwin. The Northern Territory government in Darwin gave you legislation for local government in communities. That is what the Northern Territory is trying to do. We are trying to say to the federal government that we are already here and we want the power to run our own affairs. We are asking the federal government for this power. The federal government only gave a little bit of power and the Northern Territory government is not happy. That is why we are saying that we should have a constitutional committee to look at the rights of people in the Northern Territory.

Another example is like when you live in a community and someone says that he is sick of this Lajamanu Council and will set up his own outstation where he can make his own decisions and run his people as he sees fit. That is what the Territory government is trying to do for us, like you would be asking your council for that same power to run your own outstation. But, before we do it that way, we make sure that everyone in that little outstation understands what we are talking about because we want power to develop our own outstation. We want to make the decisions at that outstation for ourselves. Sure, we get assistance from the resource centre or council but our main aim is to develop that outstation for ourselves. That is what the Northern Territory is trying to ask the federal government for: the power for it to control its own life and services.

Ms JOHNSON: If the Territory goes to statehood, would it help the Aboriginal people living in pastoral areas and stations owned by private interests and all that? At the moment, they are getting a hard time.

Mr HATTON: Yes, that has been a big fight for a lot years, hasn't it? To get their living areas on the pastoral stations. I do not know whether it will help, but it will not hurt the process. You are not going to solve all the problems in the world in 5 minutes, just by becoming a state.

Mr JOHNSON: I am just asking whether there will be better treatment if the Territory becomes a state.

Mr HATTON: Well, one thing that will make it better is that you will only have to argue with one government instead of two. That has to be an advantage. That is important. I know you are having a lot of problems in getting some of those excisions. I was Minister for Lands for a while and we started getting a few going. We had the negotiations going on the properties and then all of the stock routes and stock reserves fights. We were trying to work out living areas and we got about 20-odd done. However, there are a lot more to do.

I think it would be better, but it is going to be a long argument anyway. With the land councils, the cattlemen, DAA and the Northern Territory government, you have 4 different areas that have to agree. There are too many areas to fight, aren't there? If it could be settled as a Northern Territory government matter and rules put in place to do it, it could happen a lot more quickly. But, you are not going to wait for statehood for that. I know the Northern Territory

government would like to get all the excisions and living areas things sorted out. If it could do it this year, it would. What it wants to know is what the final picture will be, not fix it up today and then tomorrow there is another claim and the day after another claim. That is when the arguments come.

Mr JUNGALA: Excuse me, Mr President, it looks like a lot of people don't understand. (Indecipherable).

Mr HATTON: Yes.

Mr JUNGALA: And if we really need saying what took them ... (Indecipherable).

Mr HATTON: No, go for it.

Mr JUNGALA: The Aboriginal people talk about it?

Mr HATTON: Sure, yes.

Mr JUNGALA: (Indecipherable).

Mr JOHNSON: (Indecipherable except for a few words here and there. He lapses into an Aboriginal language).

UNIDENTIFIED: (Indecipherable discussion partly in an Aboriginal language). (Tape 372 retained).

Mr JOHNSON: We are going on with the same question again because there is no trust. We still don't trust each other. We are now hearing for the first time that statehood is going to come up and, whether it is this year or next year or 20 years time, for sure your government will want to have that statehood. The Northern Territory will have statehood one day. We are still asking the same question over and over and we still don't trust each other for whatever is going to be written into the constitution. You have got it there. You have already got it there. Whatever we say that we want in the constitution will be there in that government. Now, you never know, there might be someone, some government, that might want to change it and that is the thing that we don't know - that we have got a question mark over.

Mr HATTON: Yes, well one thing that you should do and has a ...

Mr JOHNSON: Or maybe that idea might be delayed for a long time. It might just sit there.

Mr HATTON: It could be. What you are saying is that you are worried that they might change it after we make it, that they could change the rules.

Mr JOHNSON: Yes, whatever we say in the constitution can be changed because you have got the power.

Mr HATTON: Hang on, the people have the power. The constitution is the people's law, not the parliament's law. Only the people can change that. When you write the thing first, you write in the rules on how to change it. You can make it really hard to change. This is the people telling

the parliament what it can do and what it cannot do. Only the people can change that - all the people.

Mr JOHNSON: So what they are saying now ...

Mr PRICE: With the Land Rights Act and the constitution, there is a potential for sudden changes. With Aboriginals making up 30% of the population and whites making up 70%, the 70% can always outvote the 30%.

Mr HATTON: But, that is assuming ...

Mr PRICE: They have a higher chance of losing.

Mr HATTON: Yes.

Mr PRICE: (Inaudible).

Mr HATTON: You can have what are called entrenchment provisions in the constitution. You could make it a 75% vote. It could vary. It could be deeply embedded whereas other constitutional amendments may require only a 50% vote. You could write that in.

Mr PRICE: And, if you write it in, everybody has got to agree to it to start off with.

Mr HATTON: That is right.

Mr PRICE: Then we get back to that number there.

Mr HATTON: Well, someone is going to have to make recommendations to start with. I have never suggested that this is going to be easy. I know it is not. I know there are pluses and minuses. There will be things that Aboriginal people will want and non-Aboriginal people may not want, and vice versa. There will be things that people in Alice Springs will want and that the people in Darwin will not want. We are going to have to work through that as a Northern Territory community. That is why it is not going to take 5 minutes. I just cannot come here and walk away and write it. I cannot do that. There needs to be a lot of work and a lot of talking to people throughout the Northern Territory.

Mr ANDERSON: Does this select committee gradually evolve a trial constitution? Is that the mechanics of it?

Mr HATTON: Yes, that book there was the original discussion document that we produced. That has a series of options and arguments. Our job is to write up what is called a draft constitution. Also, we will prepare recommendations on the structure of what is called a constitutional convention. That is like a committee of Territorians and it is outside the parliament. It will go through our recommendations and the work we have done and prepare what will be known as a proposed constitution which will go to a vote of the whole of the Territory people in a referendum. Thus, in the end, you will have a right to say yes or no to that proposed constitution. However, it will be a long process to get to that. We are really working very hard to involve the people so that it does become the people's law.

Mr ANDERSON: But when it gets to the stage of having the referendum for the constitution, it will be either a yes or a no vote? You will not be able to change it?

Mr HATTON: By that stage, yes. That is why we are going around now and asking people to have their say, put their views down and tell us what they think.

Mr ANDERSON: In the federal sphere, there is no Bill of Rights, is there? Like they have in America?

Mr HATTON: That is right.

Mr ANDERSON: Is your select committee suggesting that a Bill of Rights or a Bill of Rights philosophy will be written into the eventual constitution?

Mr HATTON: We have raised the question. As a committee, we have been very careful not to recommend very much at all. Our job is to offer different ideas from different constitutions and ask you what you think about them. We have been very careful not to go out to sell a particular idea. Do you understand that? That is particularly so at this early stage. Later on, when we start to get a feel for where we want to go, we may do that. Right now, we are really trying to encourage people to think about different subjects. There are arguments for and against a Bill of Rights.

Mr ANDERSON: Once you get a constitution, it is very hard to change it.

Mr HATTON: Yes, that is right. We have to work very hard to get it as right as possible. But, it is not something that is above people getting involved in either.

To move away from Aboriginal land rights for a moment, I raise a separate matter. Do you know that, in New South Wales, the government can come in and acquire property without paying compensation and, in fact, it has done that. In the Northern Territory, it is written into the Self-Government Act that we must pay compensation. One issue is whether that clause should be written into our constitution and that is one thing that I think everyone will say yes to. Those are the sorts of issues. At the moment, because we are a territory, the federal government can acquire your personal property without compensation.

Mr ANDERSON: What for roads and transportation?

Mr HATTON: No, for any reason whatever. Technically, it can walk in and just take your house block and pay you nothing because we do not have the protection of the Australian Constitution. That is why we have got Graham here. He is a constitutional lawyer. There are all those funny sorts of things that you do not have protection for now and that becoming a state will give you protection for.

Mr PRESS: In this booklet, one of the discussion items, to bring it back to grass roots level, is whether the rights and responsibilities of local government and community councils should be written into the constitution. For instance, are the rights and responsibilities of the first local government written into the federal constitution?

Mr HATTON: No.

Mr NICHOLSON: There was a referendum question.

Mr HATTON: They asked that question last year and the Australian people said no. Those are the sort of things that may turn up in state constitutions.

Mr NICHOLSON: Some of the state constitutions identify local government.

Mr PRABHD: I was just wondering whether you envisage that, with statehood, certain aspects will still be centrally administered? I come from India and there the states have their own powers but, under the central constitution, the responsibility for administering tribal lands, for example, is still with the centre.

Mr HATTON: If you ask me what I am advocating, that might be an easier way because there are differing views on that question. I believe that the Northern Territory government should be placed on an equal footing with the other state governments. If Australia said tribal lands should be under the control of the Australian government, we will say the same thing applies for Australia. If it said land rights was a federal matter for the whole of Australia, then we would say that should also be so for the Northern Territory. But, it has said that land rights in all the states is a state government responsibility and we would say that, in that case, it should be the same here. That is why we have been discussing how the Aboriginal people, who do not trust us, can protect their land rights in the constitution and what they need to give them that protection. There are some booklets dealing with those questions which we will be sending to the communities for people to read, to get across all of those issues, because it is too much simply to say it. There is a division of power between the Commonwealth and the states and that same division of power should apply in the Northern Territory.

Mr PRABHD: Suppose the federal government says that it will give you statehood, but on certain conditions. What would happen then? If Canberra says that it will give you all your rights and you are a state but certain aspects of control and power will remain with it?

Mr HATTON: It is questionable whether it can do that actually. It is a section 121 argument.

Mr NICHOLSON: There is a view that it can.

Mr HATTON: And a view that it cannot.

Mr NICHOLSON: Whether the Territorians will accept it or not is another thing.

Mr HATTON: As a Territorian, would you except forever being a second class state?

Mr PRICE: What happens if you don't accept it?

Mr HATTON: You sit back and say no. You just keep fighting for your goal, I guess.

Mr PRICE: (Inaudible) ... you start again?.

Mr HATTON: Probably, yes.

Mr NICHOLSON: There is a power for ... (Inaudible).

Mr HATTON: If all the Territory people said, 'Yes, we want to be a state and here is the constitution that we want', even down that road, we would be in and out of the High Court getting interpretations because this has never happened before in Australia. There has never been a new state created. It is all brand new and we are all feeling our way. We are all trying to learn and think through it. None of us knows the answers. We have just got to start working.

Mr ANDERSON: Does the Northern Territory have the depth to become a state? You have just got to go across the border to see that there are more people in some towns in Queensland and New South Wales than live in the whole of the Northern Territory. There are only 135 000 people. There are bigger towns in other parts of Australia.

Mr HATTON: 175 000, but be that as it may. The fact is that some of those states such as Western Australia had less people than this when they became states and they had far less technology and communications available to be able to adequately govern than we have available to us now. We have the government infrastructure on the ground. Population and the level of economic development - none of those issues is relevant. It is your rights that are important. And that is what it is about. It is a constitutional shift in your rights.

Mr ANDERSON: And what can the Northern Territory government give us that we do not already receive as citizens of Australia?

Mr HATTON: A say over your life. A say over how the Northern Territory is managed. A bigger say over how your home is run. You might not see that as important, but I do. Really, we are fighting for your rights.

Mr NICHOLSON: In terms of rights, there would be 2 changes. First of all, there are certain rights that people in the states have under the Commonwealth which we do not have. If we became a state, we would then have those rights. For example, the Commonwealth could not acquire property without the payment of fair compensation. The second is that, whatever rights you build into the new state constitution ... (Inaudible)

Mr HATTON: And maybe it will solve a lot of the warfare that has been going on between the Northern Territory and the Commonwealth. Every area where the Commonwealth and the Northern Territory have been fighting is in an area where the Commonwealth is carrying out a state function. Every area of argument for the last 10 years has been where the Commonwealth government has been doing the Northern Territory government's job, areas where it has not transferred the functions. That is where all the fighting has been. Every one of them. Wouldn't it be nice to get most of those wars out of the way?

Mr HALLIDAY: Can you guarantee that the federal government cannot interfere in any way with decisions that the state government makes?

Mr HATTON: To the extent that it cannot interfere in a state government decision. Can I explain the difference? At the moment, any law the Northern Territory government passes is subject to disallowance by the federal government. If we pass a law, the Community Government Act for example, and the federal government does not like it, it can cancel it. It is its choice. All the

functions of the Northern Territory government are written into the regulations under the Self-Government Act. The federal government can add to or take away from the role of the Northern Territory government simply by amending a regulation in the federal parliament. It could remove the entire Northern Territory education system by removing one line in a regulation. It cannot do that in the states. By repealing the Self-government Act, it could completely wipe out the entire Northern Territory government, the Northern Territory Public Service, the whole thing. It cannot do that in the states because the states have their rights and functions protected by the Australian Constitution.

Mr HALLIDAY: What about things like uranium mining?

Mr HATTON: It would be the same as for the states. The federal government controls that by using its export licensing powers. We could open uranium mines but we could not export the product. So it would still have those levels of control, the same controls that it exercises in New South Wales, Victoria and Queensland.

Mr HALLIDAY: So you would not be able to stop another fight like the dam issue in Tasmania.

Mr HATTON: No, they are separate fights. At least, we would be having the same fights as the rest of Australia, not our own special ones.

Mr RAE: In every state, they have the same number of members, haven't they?

Mr HATTON: In the Senate? Yes, each state has 12 Senators.

Mr RAE: How would you go with 175 000 people? Would you still have the same numbers?

Mr HATTON: I think we should have the same numbers. Firstly, an extra 10 Senators would cost less than an extra 10 E4s in the Northern Territory Public Service but would be a damned sight more effective in getting things done for the Northern Territory, wouldn't they? That is point one. And that is not being critical of E4s. If you have got 10 Senators sitting in parliament, you are going to have a lot more effect on the Northern Territory That is all they cost - less than an E4 in terms of wages.

Secondly, the Senate was created as the states' House. In Australia, 70% of the people live in that area between Sydney and Melbourne, in that little pocket in the south-eastern corner. That is where all the House of Representative seats are. There is an awful lot more of Australia than that - the Territory, Western Australia and northern Queensland where very few people live. When they first formed the federation, they said: 'Look, you have got this big imbalance in the House of Representatives. How do we know you are going to look after us properly in Western Australia or in Tasmania or in South Australia or in Queensland? How do we know you are not just going to pour all the money down where all the votes are? We want some protection against that so we want to create the Senate where we have got the same voting rights as New South Wales and Victoria in order to counteract that imbalance'. That is why the states have equal numbers in the Senate. It is to protect against the trend of all the power concentrating in the south-east and make them look at the whole of Australia.

Mr RAE: You do what Joh Bjelke-Petersen did. You gerrymander the electorates.

Mr HATTON: They would have the ability to do that without that Senate-type structure. There are a whole lot of reasons why we should have equal numbers and we should have them from day 1. I think the political reality is that we shall have to argue for a phasing in to equality in some organised time frame that would have nothing to do with the size of our population. It would be a phasing in of extra numbers at every election or every second election. I think that is the political reality but, in fairness, we should have equal numbers from day 1. The aim has to be equality. As an Australian, you should have the same rights and the same responsibilities no matter who you are and no matter where you live. If you believe that, you have got to believe you should have the same rights if you happen to live in the Northern Territory. You should not have rights taken off you because you choose to live here or because you happen to live here.

I think we have pretty well talked through. I think we will probably be coming around again in October/November. We have between now and the end of May to go around the first time. What we are thinking of doing, in the second half of the year after people have had plenty of time to talk and to get any information they want, is to come back again so that we can listen to you and you can tell us your thoughts. If you need any information, please let us know. Maybe we can find a way of bringing a few communities together where we could stay for a day or 2 days or 3 days and go through it in more depth. By bringing people in a district together, that might be a better way of doing it. Then, we would have more time.

Mr ANDERSON: Can I ask a question not related to the constitution. When are we going to get an STD phone system?

Mr HATTON: Would you like me to ask the question of Telecom?

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

BESWICK — Wednesday 15 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Ray FORDIMAIL
Mr Richard KENNEDY
Mr Adam HOLME
Mr Alan WILSON
Mr John ANGUS
Mr Steve WHITE

Also present:

Barry WESTON
Sam ASHLEY
Abraham WESAN
Donald BLITNER Snr
Gloria LANE
Bandicoot ROBINSON
Neil WILLIAM
Andre ZONN
Sammy BUSH

NOTE: This is a verbatim transcript that has been tape-checked.

Mr HATTON: Thank you very much for meeting with us today. We are hoping that Wes will be here. We have been chasing him all morning trying to track him down. I am not sure where he is at the moment. He was in Katherine with us last night. We have not been able to find him this morning, but hopefully he will be out here. Maybe that is him now. We are members of a committee of the Legislative Assembly of the Northern Territory. At the back of the book that you have been given, you will see a list of the people on the committee. There are 6 of us, 3 of us from the CLP and 3 from the Labor Party. It is called the Select Committee on Constitutional Development. It is unique in that it is the only committee that has equal numbers from the CLP and the Labor Party. This is a bipartisan issue. It is not a political argument between the 2 parties. We are both working together on this job. Our main job is to write a constitution for the Northern Territory. You know there has been a lot of arguments about whether the Northern Territory should become a state or whether it should not become a state or whether it should become one now or in 5 or 10 or 20 years time. We are not asking people to tell us whether they think we should become a state or not become a state. But we all must understand that one day, whether it is next year or in 5 years time or 10 years time or in 20 years time, the Northern Territory will be a state.

Before we can be a state, we have got to have our own constitution just as, when you formed the Barunga-Wugularr Community Government Council here, the first thing you had to do was to sit down and work out the constitution, how you wanted it to work, who would be elected to it, how many people and what sort of things you would do. You write your constitution before you start saying: 'Do I want to do this now or later or whenever?'

It is the same thing with becoming a state. Before we can even think about that, we have got to say: 'What sort of a place do we want? How do we want the Northern Territory? What do we want it to be like for our children and for our children's children? How do we want to set a society? How do we develop a community so that all the people can live together? The way to do that is in the words you put into your constitution. That gives you the framework, the law. This becomes the people's law for everybody in the Northern Territory. It says what the government can do and what the government cannot do. Australia as a whole has got its own constitution and each of the states have got their constitutions. The Northern Territory has not got one yet. So our job is to start to work to write this. It will take a long time. If it was done very quickly, it would take at least 3 years from now. That is if we are quick. It is not a rush job. It is steady. We have put a lot of work in for nearly 2 or 3 years now, just doing some research and doing our homework. We produced a book like that in 1987. It is a fairly thick book. It is called 'A Discussion Paper on a Proposed New State Constitution' and it gives all sorts of ideas on the sorts of things that might be able to go into a constitution and some other information that you need to know about. It puts some ideas as arguments. Some of these things in here people think are good and other people think are bad. We have not said that we believe this or that this is what you should do. We have put in things we believe in, things we do not believe in but we have put everything we can in front of the people so that, in the end, the people themselves will decide what they want in their own constitution. That is the way it should be.

Now that is a very heavy book to read. In nearly 2 years, very few people have sat down and read that. What we did was to produce this which is a bit easier to read. It just covers the main points and it explains a bit about some of the general things that go into a constitution. It asks questions. Should there be some protection in the constitution for community government and local

government? That is one sort of question. Do you think the new constitution should say something about the courts and the work of judges? Those are the sorts of things you might want to put into the constitution. In the new state, what would be the role of Administrator who would become a Governor? What sort of powers should he have? What sort of powers should the parliament have? Do you think the ministers should all come from the elected people? Or should we follow the American example and appoint non-elected people as ministers? It opens all those questions up.

It asks some questions that have been raised with us in respect of Aboriginal people. For example, do you think there should be some provision in here to deal with land rights? Should there be some protective mechanism built into the constitution to protect the land rights and, if so, how? Should there be some special provisions in the constitution recognising the rights and privileges of Aboriginal people in the new state? This has not been done in Australia for 100 years. We can talk about all those things. As a community, Aboriginal people and non-Aboriginal people, we can work towards developing these sorts of laws, these rules, for the Northern Territory for everybody. We can determine how we want our Northern Territory to be in the future, how everyone will have a place, how everyone will have their rights and their responsibilities to make a place where maybe we can all work and live together. That is what we are trying to write.

We have produced this to give you information to think. You will see advertisements on television saying the same thing. We want you to think about the questions that are raised here, talk among your community about it, get your ideas so that you have your say to us about what you think this should say and we are doing that all round the Northern Territory. We have virtually got to bring those ideas together and we will prepare a draft constitution.

We will then also make some recommendations and suggestions on forming a giant committee of Northern Territory people which will be called a constitutional convention. It is like when you were putting your community government council together. You had some people meet and they talked and argued about what sort of things would go into the constitution, didn't you? When you sorted out what you thought, you went and put it to a vote of the people and the people made the final decision. Well, we are preparing this and then we will put it to that big committee. We are asking you how you think that should be set up. How many people should be on it? Should they be elected? Should they be appointed? Do you make sure you have Aboriginal representation? Do you have women's representation? Do you have representation from central Australia and the Gulf country and the western desert country and the Top End? How do you put that together? How many people should be on it?

That committee will take our work, all these papers and all the things that people put to us and our suggestions, and it will go through it. It will say that it does not like this or that and it will prepare a final draft which is what is called a recommended constitution and that will be put to the vote of all the people of the Northern Territory. That is why it is going to take a long time, isn't it? But, if we start working now, we can start thinking it through. We have got to start one day. Today is as good a day as any to start thinking about it. And maybe, in doing that, we can sort out a lot of the differences that are in the Territory now and get people to start working together for our common future and I know we all want that. What I am here for today is to tell you what we are doing, answer any questions you might have on any issues you want to raise, talk about it. Maybe you have some ideas now that you want to tell us about. It really is important for everybody that

you take the opportunity and have your say about this because everyone is going to be affected by it. That is a lot to say in one go, isn't it?

Mr FORDIMAIL: Yes, it is a lot all right. Some meetings we had here we could not sit down. I think it is, like you said, very hard for us to grab hold of it and put in this paper what we feel about a few things of our own decisions - for example, about the Land Rights Act. The land rights is what some people may be worried about - what is going to happen if it becomes a state.

Mr HATTON: That is the important one and I know that is probably the most important issue in the Aboriginal communities. The committee has also got other books out and we can provide copies for you. One is on land matters and statehood. I know that is important. It deals with a lot of the issues relating to the Land Rights Act. How can you guarantee that land rights will continue and that you will keep the land that you own now? How do you go about ensuring that? I said to another Aboriginal community earlier this week that it is true that most Aboriginal people just do not trust us to honour our word and so how do you build in that protection? That is fair enough, but let's think about that.

We had a long talk about national parks, right? How do we handle the national parks like Kakadu and Uluru and other areas? Now you know that, in the end, no matter what we think or thought about who should own national parks, we can reach agreement in respect of Aboriginal land and national parks. We have done that. There are other areas where it is not Aboriginal land under the Land Rights Act but where we are still going into joint management with Aboriginal people, in relation to Gregory National Park and Keep River and other parks. We were sitting down and working out joint management agreements with them as well. There are some questions there that need to be talked about. And another one is important to you right now - mining, minerals and energy on statehood. But there are discussion papers on it. They are papers that, as a community, you really ought to be talking about. And you should also talk about these sorts of things and the constitution. How do you put the building blocks in place? How do you build the first foundation stage of the main law? The main law is your constitution and you build up from there. It must be and it will be the people's law for all the people of the Northern Territory, to be written by the people on how we are going to live together.

Mr KENNEDY: You said these other states. Do they have land rights?

Mr HATTON: Different states have different sorts of land rights. They are all run by the state government, not the federal government. The Northern Territory is the only place where the federal government has a Land Rights Act. In South Australia, there is one for the Pitjantjatjara country. There are 2 or 3 Land Rights Acts in South Australia. In Western Australia, they do not have a Land Rights Act but they provided land in long-term lease to Aboriginal people. In Queensland, I think the system is they have a lease in perpetuity on Aboriginal land. New South Wales has got a Land Rights Act but they have only got little pockets of land. They have got hundreds of different pieces of land but they are all really small, not like in the Northern Territory where there are very big blocks of land where the traditional country was. In New South Wales, it might only be 10 square miles.

Mr KENNEDY: They are having problems though.

Mr HATTON: Yes, there are all sorts of arguments and ways round. We have got the start now. We have got a Land Rights Act in place and most of the land available for land claim is either under claim or is now Aboriginal land, isn't it? Also Aboriginal people in the Territory are different than in other parts of Australia in that here you have retained your culture and your language much more. You have got an integrity of your community here that is lost in places like New South Wales and Victoria. You know that when you go talk to them. How do we ensure that you maintain your culture, your language and your heritage? And a lot of that has to do with your land. But, how do you also build your future? How do you want to do that? All we are saying on the land thing is that we want to sit down with the Aboriginal people and ask those questions in this process. That is why it is not going to be a quick job. Do you think that is worth while doing?

Mr ANGUS: How does the state finance itself with a population like the Territory's

Mr HATTON: We are financed as if we were a state now. That is one of the great shocks to everybody when I say that. Everyone thinks we get some special money from Canberra because we are territory. We used to but we don't any more. That stopped completely on 1 July 1988. From that day forward, our money from Canberra came out of what they call the Commonwealth states tax-sharing pool. That is a pool of money that the Commonwealth government spreads out among all the states and our money comes out of that same pool of money, the same as New South Wales and Victoria. The way that they calculate our share of it is to use a series of formulas. The formula they use for us is exactly the same as the one they use for New South Wales and Victoria and Tasmania and Western Australia and everybody else. So there are no special deals any more. If you think about it, we have got a parliament in the Northern Territory and we have got the public service, the schools, the health services, the police and community development and local government. All those are in place now throughout the Territory, aren't they? So you have got the administration there already. We have got all the court systems right through to a Court of Appeal here already. All the structure is already here.

We charge the same taxes as they charge in the states now. The money we get from Canberra is the same. Our taxes that we charge are the same. Our basic setup is the same. And it is not worked on how big the population is. The whole reason for having a federation in Australia is that we say that, no matter where you live in Australia, you should get access to the same standard of government services and government facilities as far as possible. That is the reason for federation. And the Grants Commission works out that, to provide that schooling, health and policing and all those things to a reasonable level, it is going to cost you that much money. Now, if you charge all these taxes, how much can you raise? They pay you the difference. They do that in New South Wales. New South Wales gets 60% of its money from Canberra. So does Victoria. Now we get just over 70% of our money but Tasmania gets nearly 70%. So that is not unusual.

And you are paying taxes. You are paying personal income tax. Every time you buy something in a shop, you are paying sales tax. If you have a beer, you are paying excise duty to the federal government. If you buy petrol, you pay money into the federal government. You are paying import duty through the goods you buy. You go and buy a car and I think that 80%, \$80 out of every \$100 for that car you buy, goes to the federal government. Now what they do is they collect all that and they pay some of it back. And they do it to us and to all the states. So the answer is that it will not have an effect. Just the same as if we got the royalties coming in from offshore oil and gas or from the uranium mines like Ranger, that would increase our revenue-raising so they would

take a bit off there so it would end up the same amount of money. We are not going to get a bonanza out of it and we are not going to get extra money either. The only way we will get extra money to spend is if we grow and build our economy.

Mr HOLMES: So why then do we need statehood?

Mr HATTON: Well, it is having a say in decision-making over your own life. It is like going from childhood to adolescence to adulthood. Now I do not know how you put that in any simpler words. It is having the right to make decisions for yourself that affect your life. When you are a child, your parents do it for you. In adolescence, you start to test your wings a bit, but you have still got someone to protect you and look after you and eventually you have to take a step, become an adult and take control of your own life. We are still somewhere in that adolescence area, halfway between childhood and adulthood as a community.

Mr HOLMES: But they are saying they are having problems with the population in the Northern Territory.

Mr HATTON: Yes, we had. Statehood is not going to cure the cycle, the ups and downs of economic performance. It will not cure that. If you get a downturn in the economy in Australia, in the world, it is going to affect here just the same as everywhere else. The question is your right to decide how to handle that.

Mr HOLMES: So then, there are a lot of people coming and going from the Northern Territory. If we go to statehood and people are going to lose, through statehood, their district allowance and their tax zone ...

Mr HATTON: But not because of that.

Mr HOLMES: But that is going to go.

Mr HATTON: Why?

Mr HOLMES: Well that is just what I was told ...

Mr HATTON: It has already gone and we are not a state.

Mr HOLMES: But that means less people are going to be inclined to stay here or even to come here.

Mr HATTON: The evidence is showing exactly the opposite. In fact in the public service, there has been a dramatic increase in the stability in the last 3 years. The turnover has dropped right off.

Mr HOLMES: The population is going backwards.

Mr HATTON: It went backwards in 1987-88 because we had a 15% cut in government budgets. In 2 years, in that process, with all of the special money going out of the system and coming back to being funded like a state, we had 5% taken out in 1986 and 10% in 1987. That hurt. You remember the pain that you went through, the cuts in capital works, the arguments over

public service conditions, the reductions in the size of the public service right through the system. If you pull 15% of the money out, and it causes a ripple through the economy. You can also see now, since the earlier part of 1988, employment has been growing. The ABS is now recording population increases as of last year and therefore the turnaround has occurred. Underlying that fall in public spending, we still had strong growth in tourism, in pastoralism, in mining, in the real wealth-creating industries, but the effect of their growth was being counteracted by the nosedive in public spending. We have stopped the dropping off in public spending now. The other growth is showing through again. It has been showing since early 1988, very tentatively, but there is a consistent upswing since then.

Mr HOLMES: The ACT has 250 000 people and it has only just decided to go ahead with self-government and even that was ...

Mr HATTON: It is thrust on the ACT.

Mr HOLMES: Yes, but all this is dependent on statehood, isn't it? The constitution.

Mr HATTON: Yes.

Mr HOLMES: If we do not go to statehood, then you don't need a constitution.

Mr HATTON: You need to accept the fact that, whether it is now or in 10 years time or at some time, it will happen. It is not an if or a maybe. It will happen. We can argue about when it happens, but it is going to happen. There is no question about that. I do not think anyone denies that.

Mr HOLMES: But, I was just thinking that, if the population is not going increase, it probably might not happen for a very long time.

Mr HATTON: I find that an irrelevance. You might have difficulty accepting my view on that. I maintain that the size of the population has got nothing to do with it. We are larger now than Western Australia when it got statehood and, in those days, they did not have telephones, motor vehicles, sealed roads, aeroplanes and therefore the ability to govern was dramatically reduced by the lack of technology. We have a much better ability to govern now and we have the infrastructure in place now. The question is whether you as an Australian want the same rights as other Australians. That is what the question is because that is the fundamental change.

Mr ANGUS: Is that going to help the consumer though? We are more isolated than the bigger states and we pay higher electricity rates and higher food costs. I wonder whether those will come down.

Mr HATTON: Not because of statehood. There is not a pot of gold there and I am not trying to sell that to you. Statehood is not about whether you can reduce your electricity prices, whether you can reduce the relative cost of food and housing, get decent housing and sewerage and all those sort of things to improve your quality of life. That will depend on the government's work, the growth in our own tax base and opening of opportunities for you to develop your own industry and your own future. You have got to create wealth before you can spend it. That is the case that we are faced with now and, whether or not we become a state, we still have to fight through that. If

we want to cut electricity prices, the first thing that we have got to do is sell more electricity or sell more gas. That is the only chance that we have got of doing it. But we are going to have to do that whether or not we become a state. Do you understand that? It does not affect those questions. What it does affect is some - perhaps Graham, would you like to pick up a few of the general issues that would be dealt with if we became a state?

Mr NICHOLSON: Well, if you are a state, the federal Constitution provides a number of rights and responsibilities which at the moment do not apply to people in the Northern Territory. One example that you gave the other day was the acquisition of property. If you own property in a state - this is just one example - the Commonwealth government cannot come along and acquire the property and then pay no compensation whether you are a private citizen or a state government.

Mr HATTON: It has got to pay for it.

Mr NICHOLSON: It has got to pay a fair compensation. That is one example of a right that does not apply if you live in the Northern Territory, whether you are a private citizen or a government. But, that even extends through to land rights because there is no constitutional guarantee that would prevent the Commonwealth government from acquiring any property, including Aboriginal property, for no compensation. That is one right that you have in a state under the Commonwealth Constitution that you do not have in the Territory.

Thus, there are those sort of rights and there are a number of others. The Commonwealth Constitution does not have a Bill of Rights like they do in America, but it does have certain rights and obligations. The other aspect is that, if you are a state, then you have your own constitution. You can entrench certain rights into your own state constitution that the government has to comply with, whether it is commonwealth or state. For example, you could build into your own state constitution certain rights that would prevent the state government from certain things. For example, you might want to entrench some rights in respect of Aboriginal land which would put it beyond the scope of the northern parliament to interfere with.

Mr HATTON: The reality is that, under the federal Land Rights Act now, a federal government one day could turn around and repeal that act and all Aboriginal land as it is now would cease to exist under European law. The federal government could do that because it is not in the constitution. I do not believe that it will do that. I am not suggesting that it would, but it has the power to do it. If we pass a law in the Northern Territory, the Commonwealth government has the power to disallow that law within 6 months. It has never been game to do it, but it took us right up to the line a couple of times. That happened in respect of a debate over the Criminal Code, didn't it? It threatened to disallow the law but, in the end, it was not game to do it. It was bluff.

If you want an example of where your potential rights are at risk, do you know that all the functions or the powers of the Northern Territory government come from a federal act of parliament called the Self-Government Act. All of our functions are in regulations under that act. Please correct me if I am wrong. I am right so far?

Mr NICHOLSON: Yes. The whole existence of the Territory government depends on the Self-Government Act.

Mr HATTON: If they repeal the Self-Government Act, the entire Northern Territory government could be closed down like that, just by repealing it and you would have no vote for anyone. Some people might think it is a good thing, but I don't. I think self-government has been good for the Northern Territory.

Equally, simply by repealing a regulation, by taking one line out of a regulation under a federal act of parliament, it could wipe out the entire schooling and education system in the Northern Territory. That system has no no protection because we are a territory.

Mr ANGUS: What about the treaty that is drawn up on Aboriginal land?

Mr HATTON: What treaty? The Barunga statement? That is not a treaty.

Mr ANGUS: No, the treaty that land rights and land claims lie under.

Mr HATTON: There is no treaty. There is a Land Rights Act. There is no treaty. There has been talk about whether there should be a treaty, but the federal government could do that anyway. What we are saying is that the federal government retains power here, the same as it does for everywhere else in Australia, but why should that power be different here from everywhere else in Australia. That is all we are saying. Why can't we be treated the same. Why is that you could move to Queensland and, simply because you moved across the border, your rights change. If you just came here from Queensland, why is it that you have your rights stripped off you simply because you took a job here? Is that right?

There are a million questions to work through and I am not suggesting it is easy. It is not going to be quick. We talk about Aboriginal self-determination, but what about Northern Territory self-determination? Those are the questions that are being asked. It is not money. There will not be any extra money for us and there will not be less either. The federal government would still have its own right in constitutional powers, like it has in the states. If the federal government entered into an Aboriginal treaty with Aboriginal people throughout the whole of Australia, that would apply here just the same as everywhere else.

The question is the entrenchment of your rights that statehood could give you. But, we cannot even think about that until we have done this job. In doing this job, you ask yourself: 'What sort of protection do I want? What sort of rights do I want to build for myself and for the community in a constitution? How do I protect my rights?' It is quite possible that statehood could be the best way to absolutely secure land rights if it is done in a particular way. Do you accept that?

Mr HOLMES: Yes, but there are no guarantees if you don't.

Mr HATTON: That is what we are here talking about. That is why it is important that people have their say. There are no guarantees of anything. But also there is nothing in front of us saying what is going to happen. We are asking for people to put things on the table.

Mr HOLMES: It also could be worse.

Mr HATTON: If, on balance, the community at large believes it is going to be worse, it will say no. Let us give them a chance to work through to that, to have the right to say yes or no and to

have a think about what they want. If we do the job properly, they will say yes because we have found the answer for what they want. Now, we are asking for yes for a constitution, not yes for statehood because that is a separate question.

Mr GRAY: With Aboriginal rights, your rights, your customary law and the way that you want to live and things that you want to do, if you talk about a treaty, say like the federal government wants to make a treaty with Aboriginal people, it will make a treaty but it will be a law of parliament and that is a law that parliament can change if it wants to. The constitution is the people's law and it needs the people to change that constitution. It cannot be done by parliament alone unless you want parliament to do that. It is up to you how you want to set this law up. Your rights and your protections can be put into that constitution, something that the Australian Constitution even or other state constitutions do not have. This constitution can recognise your rights. There is one aspect that other Australian states just do not have. Things that you want to have in this thing to control your life and the way you want your children to live, you can do it. You can have a chance for this and it is probably the only place in Australia where you can do it.

Mr HATTON: And when you write it, you also write how you go about making a change if there is ever to be a change in the future. You can write those rules in too. The issues of entrenchment can be looked at, the stages of entrenchment and the different components. It really is a blank sheet of paper that people can write on, subject only to the Australian Constitution. For example, you cannot break away from the monarchical system of government. Whether we want to or not, we cannot. That is a decision for the whole of Australia to make. It is those sorts of limitations that I was talking about.

Mr HOLMES: What does that mean? That we have to have a Governor?

Mr HATTON: You have got to have a Governor because the Australian Constitution requires it.

Mr HOLMES: What about an Upper House?

Mr HATTON: You do not have to have an Upper House. One suggestion that has been made is that perhaps we should look at having guaranteed Aboriginal representation in the parliament. I have been absolutely against an Upper House and I think all of us have been. But, someone said that we should look at a guaranteed Aboriginal representation, 2 or 3 or whatever seats, in the parliament. You then have to ask yourself how you would do that. You look at the New Zealand experience which has guaranteed Maori representation in its parliament. The catch there is that each aboriginal person has to choose between voting for the Maori representative or the general representative. He cannot be on both rolls; he does not get 2 votes. He can vote for the Maori candidate or for a general candidate in the electorate who may or may not be a Maori. You have that choice but you cannot vote in both.

There could be a system where you have your normal elections for the electorates - Wes Lanhupuy is the member for here. Then, you could have an Upper House or a House of review that had that sort of proportional representation of the population. I dread the thought of trying to run it together. I do not know the answer. There are arguments for and against all those sorts of issues and that is what we as a community should be talking through. Remember that, whatever comes

out, will need to have the support of the non-Aboriginal population as much as it needs to have the support of the Aboriginal population. We have got to think of both sides of the fence in the process.

Mr WHITE: Steve, you said that the feeling within the committee is against an Upper House. What is the argument with that?

Mr HATTON: What is the argument for an Upper House?

Mr WHITE: I was wondering why you are opposing it?

Mr HATTON: The Upper Houses are anachronistic leftovers from the days when the average citizen never got a vote. It was where all the squatters maintained control over the lives of the populace. That is where the Upper Houses came from.

Mr WHITE: Yes, I am aware of that. But, the argument for them obviously, and it is only one argument, is that an Upper House provides a House of review.

Mr HATTON: The process has to be very carefully looked at. The argument in the federal parliament where they have the Senate and the House of Representatives was a very straightforward argument. You have the people's House where each electorate, which are all about the same size, votes in a member. There are 154 of them. That is all very well but most of the Australian people live between Sydney and Melbourne, in that little corner in the south-east. If I happen to live in Darwin or Cairns or Western Australia, which has only a small proportion of the population, I would be forgotten because all the politicians will come from down there. Politicians, being what they are, will want to be re-elected and therefore they would want to spend money where the votes are and the whole of Australia would not be developed properly. To overcome that imbalance, the Senate was created so that the states had equal representation. That is why Tasmania, which has only 450 000 people has 12 Senators, and New South Wales, with 5 million people, also has 12 Senators. That is designed to overcome the fact that most of the Australian population lives in that little corner and to ensure that they think of the needs of the whole of Australia. That is the only argument I have ever seen for an Upper House - a review process to force the government to think right across the spectrum of its responsibility.

Mr WHITE: You do not think there is a place for an overall House of review, not one representing, for example, state rights but one that may act as that a House of review over the Assembly, the Lower House.

Mr HATTON: It could be. To use the same analogy that I have for the federal parliament, is there an argument for dividing the Territory up into districts by size of land area so that each district has a member in the House of review, irrespective of how many people live there?

Mr WHITE: So you are talking about having 2 sets of electors.

Mr HATTON: Well, you would have one like we have got now and another one over the top. But, to force increased representation for the remote and sparsely populated parts of the Territory would force the government then to ensure it has the balancing act of allocation of resources to look after the whole area.

Mr WHITE: There is another way around it, isn't there? That would be to have 1 electorate for the whole Territory and have people elected from within that single electorate. Of course, the difficulty for the party political system is that a large electorate like that tends to turn in a large number of independent members.

Mr HATTON: Yes, look at Canberra. In Canberra, they have an unworkable parliament. That is one of the great problems with that system.

Mr WHITE: A lot of people would not see that as a problem. A lot of people would see that as a definite advantage.

Mr HATTON: Can I speak from a politician's point of view? I think it would be great if you were high on the ticket within your party so that you would get the first flow of votes from your party, like they do in the Senate ticket, and, once you are in there, you are not answerable to any particular electorate. If there are 25 of us representing Beswick, which one are you going to pick on when something goes wrong? It was the other guy who did not do it, not me. How do you nail someone down to say: 'You have got to look after me. I elected you to look after my area'. That is the trouble with multiple member electorates. We have it in Darwin now with the council. There are 3 alderman in each ward and you cannot get any one of them to do anything because there are another 2 to blame as well. There is a lot to be said for single member electorates from the voter's point of view.

Mr WHITE: I would not advocate that for a Lower House. It is merely a suggestion for one way of ...

Mr HATTON: You mean a House of review?.

Mr WHITE: Yes, certainly.

Mr HATTON: Every option is there. What I think is not going to determine what goes into it. It is what the community as a whole thinks. I suspect the community as a whole will say that it does not want 2 Houses of parliament. I have never heard anyone promote the view that he wants an Upper House.

There are an awful lot of questions you can think of. You can really brainstorm on any combination you like. It will create the type of society we want to have, the shape of it. I do not think there is a more important job that you can do.

Mr WILSON: Steve, it is inevitable, as you say, that the Territory will get statehood, whether it be in 20 years, 30 years or whatever. Am I to take it then that a decision has been made that a constitution will be written for that event.

Mr HATTON: Yes, it is for that event. You cannot even consider the question of when we would become a state until you have that document, that foundation statement.

Mr WILSON: Therefore, assuming it was to be in, say, 5 years time, wouldn't it be just as logical to take, for example, the constitution of a state like Queensland which, in some respects, is

compatible with the Territory in locale, population etc, and then rewrite that to suit the peculiarities of the Territory?

Mr HATTON: In fact, we went through all of the state constitutions. Remember that they were written in last century and reflect the attitudes that existed last century. Graham is the person who did the research. Perhaps I can throw that over to you, Graham.

Mr NICHOLSON: They are really colonial constitutions, not state constitutions. They were drawn up in the colonies before Australia even existed. They have not basically changed since the last century. They are still basically the same shape. Most of them are only ordinary acts of parliament. They do not have a special entrenched status like, for example, with the Commonwealth Constitution. We went through the whole lot and we came to the conclusion that they did not offer a suitable model for a late 20th century society with quite new problems and new considerations of a multicultural society.

Mr WILSON: Surely there would be elements of those constitutions that could be updated.

Mr NICHOLSON: Well, it is not our job to update the states.

Mr WILSON: No, what I am saying is using them as a guideline.

Mr NICHOLSON: Well, certainly I think we have already done that. I produced a volume about that thick comparing them. I think there are provisions along the lines of the traditional Westminster system that we could draw on, but I do not think we would want to be limited to that. We would want to look at, say, some of the new emerging countries of the Pacific and what is happening in America and Canada. We would want to look at it fairly broadly.

Mr HATTON: You would find a lot of those sorts of things in here now. We will be leaving some of these things behind for you.

Mr NICHOLSON: You mentioned Queensland. Queensland is a bit different in some ways. For example, it does not have a comprehensive Land Rights Act which would have quite a significant impact on any constitution.

Mr WILSON: Obviously, I do not mean it is exactly the same as the Territory because there are no 2 places the same. I was just throwing the point forward that, in order to save time and expense, that could be the way to travel.

Mr HATTON: You could work off the Self-Government Act as a basis too because it was structured for the Territory. That is the closest thing that we have got to a constitution now and that has formed part of the basis for what we have put. But, most of that work is done now. You can pick that up and go through it and start to see the issues there. It gives you a chance to think about them.

Mr NICHOLSON: I think we could have done it on the cheap but the thing is we decided not to do that. We decided to do it by consultative process over a long period of time which is basically what was done in Papua New Guinea when it drew up its constitution. Our Self-Government Act was drawn up in Canberra with virtually no reference to the Territory at all. There

is very little consultation with the Territory at all. It was just plonked on us. We have opted to go the other way. It might be a bit more expensive but at least it is a consultative process which let's everybody have a say in it.

Mr WILSON: Who will decide the time that we want statehood?

Mr HATTON: First of all, there has to be a clear picture of what statehood is going to mean. The first thing is that the people of the Northern Territory have to say that they want it. Once the Territory people want it, it will be a battle, interstate and with the federal parliament as to when and under what conditions.

There is another book that we have left there for you on the options for the grant of statehood. That deals with some of those sorts of questions. Under section 121 of the Constitution, the federal parliament can accept new states under such terms and conditions as it determines. We will probably be in and out of the High Court 20 times between now and the day we become a state, as they try to sort it out. It has never been done before in Australia. We are testing out for the first time areas of the Australian Constitution that have never been used before and therefore the lawyers and judges will have to try to interpret what it means and what the federal parliament's powers are or are not.

To say the parliament can accept new states under such terms and conditions as it deems appropriate sounds as though it can do what it likes, but it may not be that way. There is another view that says a state is a state is a state, that you cannot be half a state, that you are either a state or you are not. Does the parliament have power to deny to a new state some of the constitutional rights or powers of the other states? It may not be able to say that. The ways you go about handling it administratively might be different but the constitutional powers might be the same. The division of powers between the federal government and state might be the same even though the way you go about doing it might be different. For example, with industrial relations, you could have a joint commission rather than 2 separate ones. There are those sorts of things. It will be a lot of work to go through them.

Mr WILSON: The compilation of the constitution would be an ongoing problem in itself.

Mr NICHOLSON: Yes.

Mr WILSON: If statehood is, say, 20 years away, my grandchildren might want to have some say in the constitution and possibly they would be the people deciding whether or not we want statehood.

Mr HATTON: I believe that, once the community has decided what sort of a society it wants, the next thing it will ask is when it can have it. If it does not, at least we will have a document that will be adjusted as generations change. I hate to think that we are talking about generations of people before we become a state.

Mr NICHOLSON: There is no suggestion that the constitution will be frozen. We anticipate that it will have some amendment ability in it but it may be difficult to change. Thus, there would be an ongoing debate as to whether you want changes but it may take a while, with referendums and all sorts of things, to change it.

Mr WILSON: Do you have any anticipated time that you would like to see a constitution written up?

Mr HATTON: Under our terms of reference, we are required to report to parliament by late May next year on our part of the job. Prior to that determination, we were required to report back to parliament by March 1989 and, before that, it was March 1988. However, we are working on the basis of trying to do the job properly rather than trying to do it to a fixed time frame. Nevertheless, we would like to progress along the road. We are going out now to talk to the communities and get people thinking about it. We propose that, later this year, we will come round again and perhaps not on short trips like this. My suggestion is that we try to organise well in advance so whole districts can come together and spend 1 day or 2 or 3 days talking about issues that people have thought about and start to get the submissions and the views coming to us. We could get that done in the second half of this year, in October/November/December. We could see as many people but they would come to one central location rather than our going to 20 places. Then, if we could take the results of that and spend the first months of next year writing it up, maybe we would be in a position to put some views forward to the parliament in late April next year.

We need to be able to say to the parliament: 'Here are the research papers that we have done. Here are the transcripts of all the evidence that we have received; it is all published. Here are our recommendations as to why we recommend this document. We recommend that there be now formed a convention of Territorians, being 63 people made up of 20 elected from these different districts and x number representing the Aboriginal communities who shall be elected at a meeting of representatives of all Aboriginal communities, that there should be x number of women representatives and so on. There should be representatives from each local government and each community government council'. If the parliament agrees, we will go ahead and form that convention which will take a year or 2 to work through all the papers. The representatives will go backwards and forwards to their constituencies and develop the constitution. When they have finished their work, they will say: 'We have gone through what the parliament had. We like a lot of it. There are a couple of things that we did not like and we changed them. We recommend that this document be put to a vote of the people'. Then, all the people in the Territory would vote yes or no on it. That is not going to be a quick process, is it?

Mr WILSON: No, definitely not. It will be a very costly exercise as well. I would hate to think that, come the crunch, no one wants statehood.

Mr HATTON: Wes, I have been saying consistently that the reality is that it is going to happen. The question is not if, but when. Do you dispute that?

Mr LANHUPUY: No.

Mr HATTON: Well, have I given you something to think about?

Mr FORDIMAIL: Yes, something to think about all right. Do you like to suggest that everyone get together and maybe on the next round we can all sit down and talk about it. People from all the outstations can come here and we will have a big meeting, eh?

Mr HATTON: Yes, but talk about it among yourselves first.

Mr FORDIMAIL: Yes, we got to talk about that first.

Mr HATTON: And if you have some questions coming out of that and you would like someone to come out to explain things to you, that is fine too. We organise someone. And I do not mean a politician. We will get Graham or one of your people to come and explain what these things mean. There is a free phone hooked up. Rick Gray is the executive officer for this committee. He works in the parliament and he and his assistant, who is starting on Monday I believe, will be able to take any messages and chase up answers for you.

Thanks for meeting with us. I appreciate the opportunity to catch up with you and talk about it. I hope we can keep talking about it and keep discussing it right across the community and work towards this. We will leave all those books behind for you.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

KATHERINE — Thursday 16 March 1989

PRESENT -

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Mark CROSSIN
Mr Trevor SURPLICE
Mr Jim FORSCUTT
Ms Prue ROUBICEK
Mr Leon CHOLSH

NOTE: Edited transcript.

Issued: 10 April 1989.

Mr HATTON: Ladies and gentlemen, thank you for coming along this evening. This is an unusual gathering. This is not the type of issue that immediately grabs everybody's attention. However, I would like to introduce our select committee and explain what we are doing and why we have come to Katherine. We are adopting a somewhat more formal approach than we have in some of the other communities around the Territory. If any person would like to express any views, we welcome that. A full transcript will be made of these proceedings. We also welcome any questions that people may have. Our aim at this stage is to start the process of encouraging the Northern Territory community to think about the form and structure of a future constitution for the Northern Territory.

This committee is known as the Select Committee on Constitutional Development. It has been operating in the Legislative Assembly since early 1986. It has had a number of changes in membership and, over the period of its existence, its terms of reference have changed. The terms of reference and the membership of the committee are indicated at the back of the booklet that is being circulated. As I said, our committee is unique because it is the only committee ever established by the Legislative Assembly that has equal representation from the 2 major political parties, Labor and CLP. There are 3 opposition members and 3 government members on the committee. The normal composition of a parliamentary committee is 3 government and 2 opposition members. This committee has equal representation to emphasise the clear bipartisan approach in respect of constitutional development for the Northern Territory. This is not a party-political issue so far as we are concerned, particularly the work of this committee.

Everyone knows that I am a staunch advocate of a move to statehood as quickly as possible. However, my role is chairman of this committee and we are not asking the community to support or oppose statehood. That is not the question that is before us. We are asking the community to recognise that, whether it is in 5, 10 or 20 years time, the Northern Territory will become a state. However, before we can even consider that question, we will need to have developed a constitution. As a community, we will need to have worked through and have come to a decision on what sort of a society we want for that future state. It is the function of this select committee to work on that process.

We are working on the first stage of a 3-stage process. With legal assistance, the committee has undertaken some 3 years research into constitutions throughout Australia and the world. We have assembled a wide range of ideas and options in a discussion paper which was produced in October 1987. It can be pretty heavy reading but it discusses most of the issues that are likely to be brought forward when considering a constitution for the Northern Territory. There are some suggestions from our committee. There are many things that are not supported by our committee but are raised for the purpose of informing and consulting with the community. We are not trying to quash views that may exist in the community. We have also produced booklets relating to the options for the grant of statehood and a document entitled 'Representation of Territory Constitutional Convention'.

Our job is to move around the Northern Territory community in an effort to get people thinking about a constitution: what it is, what may be put in a constitution and what people would like to see in a constitution. We will be asking many questions. Some are simple and straightforward such as whether the parliament should be unicameral or bicameral. We may have our own opinions on such matters but we are asking for the views of the people in the community. Do you think that

ministers should be selected only from elected members or should there be an opportunity to select ministers from other than elected members as is done in America? Do you think that we should have a Bill of Rights structure within the constitution or is it better not to do that? There are many such questions that we as a community will be confronted with. Should there be some constitutional recognition of the particular place of Aboriginal people in the Northern Territory? Should there be some constitutional guarantee of land rights?

I do not expect you to give me a clear answer today. I realise that many issues will be controversial and will be the subject of debate throughout the community. Our job today is to stimulate thought and discussion. We ask you to recognise that one day the Northern Territory will be a state with its own constitution. We are providing everyone in the community with the opportunity to have his or her say about how the Territory should function, what sort of a society we should have, how we should express that in our own constitution and how we can work towards that becoming a people's law.

This committee will take the community views and seek to bring them together into a document which we will recommend to the Legislative Assembly as a draft constitution. We will also be seeking submissions on the form and method of selection of a constitutional convention. That could be described as a giant drafting committee comprised of representatives of the Northern Territory community which would work through our documentation, accept, reject or vary it and arrive at a proposed constitution that would be put to a referendum of the Northern Territory people.

Thus, it is a 3-stage process and we are in the early days of stage 1. You will appreciate that it is not a process that will happen quickly. If we are to do the job properly, we must seek to involve as wide a cross-section of the people of the Northern Territory as possible. We must seek to arrive at a constitution that will provide a real place for everyone who lives in the Northern Territory, irrespective of their race, religion or creed. In that process, we should seek to build the sort of Northern Territory that we want. I believe that there can be no more significant exercise in which Territorians can participate. Such a process has not been undertaken in Australia for 100 years. It is unlikely to happen again but it is our opportunity to participate in that. With those opening remarks, I ask Mr Wes Lanhupuy, the member for Arnhem, and Mr Rick Setter, the member for Jingili, if they would like to add anything by way of introductory comments.

Mr LANHUPUY: As Steve said, it is important that the select committee is visiting major and remote communities throughout the Territory in order to ascertain the views of the people and to provide them with information. It is important that people are coming together to discuss the issues. We want people to start talking about the statehood proposal. The committee itself does not have in mind a proposed date for a constitution although we plan to report to the Assembly on what we have done in respect of gathering information in relation to such a constitution. The committee would like the people of the Northern Territory to tell parliament when they would like a constitution. We would like people to consider the information that we have provided, discuss it with people who have particular interests in relation to the terms of reference of this committee and give us their views.

As Steve said, we are happy to provide any information that people may want. People should feel free to write to the executive officer of this committee. I am sure that the committee

would be more than willing to return to discuss any points of interest to the people of Katherine or to the people of other parts of the Territory. Once again, I stress that it is important that the information that you gain here should be discussed widely in the community. We do not expect an answer overnight. We are asking you to do what no state in Australia has done for 100 years. I support the proposal because we will have a state because of the types of powers and functions that we have in the Territory. It is crucial that the community assess what powers we should have as a state and that the new state will be the result of agreement among our multicultural community. We should arrive at a constitution of which we can be proud. We should be able to say proudly that it is our constitution.

Mr SETTER: About 3 or 4 years ago, the Chief Minister of the day indicated his intention that the Northern Territory would move towards statehood as quickly as possible. It is indeed possible to do that if there is a federal government that is favourably inclined towards that process and is prepared to pass an act of the Australian Parliament to put that in place. In fact, the constitution states that a new state can be created in 2 ways. It may be created by an act of the Commonwealth parliament under section 121 of the Commonwealth Constitution under which statehood may be granted on terms and conditions, including the extent of representation in either House of parliament, as the federal government thinks fit. The other option is to have a national referendum to alter the Commonwealth Constitution under section 128. Thus, if the federal government were so inclined, it could move to provide statehood for the Territory before the end of the year. However, the reality is that, unless that move is supported by the people of the Northern Territory, it would be for nought.

This is a bipartisan committee and we have all agreed that we must undertake a process of consultation with the people of the Northern Territory. That takes a long time because we have a widespread community with a very interesting mix of people. Indeed, nearly 25% of the population are Aboriginal people who have special needs and interests. All those people must be consulted and their particular needs taken into consideration. In August 1986, the Chief Minister of the day indicated that we would undertake this 3-stage process that Steve touched on earlier. First, there is the preparation of a draft constitution, then the convening of a constitutional convention and, at the completion of that stage, the Northern Territory government will conduct a referendum to ascertain whether or not the Northern Territory people support the draft constitution or the move towards statehood. If we reach that point, the Northern Territory government would go to the Commonwealth with a proposal that we should move towards statehood.

We have come to understand that this is a very long and complex business. The committee has spent the best part of 3 years putting together these documents and, if you read through them, you will find a whole range of options on the various issues that will affect the drafting of a new constitution. Thus, it is not a matter that can be dealt with lightly or quickly. As I indicated earlier, it is important that we undertake this consultation process and I am quite sure that we will return to Katherine again before we reach the end of this process. Our aim today is to obtain feedback and comment from the people of Katherine.

Mr HATTON: I know there are some people who want to put some views forward. I understand that Mr Crossin wishes to make some comments. Mark, I believe that you are here as Secretary of the Trades and Labor Council?

Mr CROSSIN: Yes, I am. Our substantive submission has already been before the committee. What I would like to do today is to indicate that we are in the process of completing a submission in response to Sir John Moore's report. If you do not have it already, I understand that you will receive a paper from the national office of the Federated Miscellaneous Workers Union which indicates that we disagree with the proposal seeking the handing over of industrial relations powers. We see no need or desire, if you like ... (tape cuts out) ... federal industrial relations system that we have in the Northern Territory and I understand that will also be supported by our major adversary, if you like, the Confederation of Industries. I serve notice that we have a draft position in response. I would be prepared to make some without prejudice comments ...

Mr HATTON: Perhaps I should clarify that our committee is not dealing with the issue of the transfer of powers or the mix of powers on statehood. We are dealing very specifically at the moment with the matter of what sort of a constitution the Northern Territory people will have for its own community. The other issues such as industrial relations powers and the transfer of powers, which may occur even before statehood, are separate issues and will be dealt with separately. We note the position that the Trades and Labor Council has adopted. We have at least one submission from the Miscellaneous Workers Union in respect of that particular matter.

Mr SETTER: Mr Chairman, was that received when the committee sat in Darwin?

Mr HATTON: Yes.

Mr CROSSIN: There is also another one coming from them in response to Sir John Moore's paper.

Mr HATTON: The committee also is reviewing that paper and we will be varying our response to it.

Mr SETTER: It is important to understand that the Chief Minister has indicated that he has approached the federal government for the transfer of the remaining state-type powers which, I understand, includes those in respect of industrial matters. That issue has been taken up by the Northern Territory government and it is a separate issue to what we are undertaking here today. Our concern is the consideration of the constitution.

Mr CROSSIN: Actually, having had an opportunity to read this briefly, you have answered some of the questions that I intended to ask. We believe that we will have a major role to play in the move towards a constitutional convention. On behalf of the Katherine Trades and Labor Council, I advise that we would take an active part in that convention. I think that I will leave it there because you have our substantive submission anyway.

Mr HATTON: Certainly, we look forward to submissions from the trade union movement in respect of what should be incorporated in the constitution or on any other matter. We are keen to have representations in relation to the constitutional convention.

Mr CROSSIN: All right. I think I will leave it there. Thank you.

Mr SURPLICE: I am Trevor Surplice from the Katherine and Regional Trades and Labor council. I would like to take this opportunity to endorse the stand of the Northern Territory Trades

and Labor Council. The Katherine and Regional Trades and Labor Council endorses that stand. We are pleased to have the opportunity to hear from you. Some of our questions have already been answered. The council is concerned about the handover of industrial relations to the Northern Territory government. It has not been very smooth in the past. Hopefully, we might be able to overcome that in the future. However, I would like to go on the record as saying that we have reservations about the handing over of that power. I hope that the government takes that on board and, if it does come up, we will be able to work together a little bit better than we have in the past. That is all I have to say.

Mr HATTON: Our committee will be discussing a position in respect of Sir John Moore's paper, probably in Alice Springs in the middle of April. We are to have our next meeting there and we may be developing our responses then. I know that it is later than the government wants but that is when our committee has programmed it.

Mr SURPLICE: We will have the opportunity to make written submissions?

Mr HATTON: Certainly. The committee is here to explain what we are doing and to encourage people to find out a little more about this entire matter. We want people to develop an attitude and tell us about it. We want to encourage discussion in the community.

Mr SURPLICE: We were not briefed on this. Unfortunately, I only found out about it at 12 noon in Darwin today. Of course we have not had the opportunity to make any sort of a submission. We can listen to you today and then go away and draw up a submission.

Mr SETTER: Please do.

Mr HATTON: Thank you. I call on Mr Jim Forscutt, the Mayor of Katherine.

Mr JIM FORSCUTT: Thanks, Mr Chairman. I am here as a private citizen. I have not spoken to the council directly about the problems and therefore I prefer to speak in my own right.

Firstly, I have not fully understood the full implications of what was expected of me. However, I am happy to say publicly that I support the move to statehood. I have noted a few matters that I would like to see considered if that has not been done already. If you would bear with me, I will put them to you and you can tell me whether or not they have been considered in the overall context. The first is the flag, coat of arms and flora and fauna emblem. They should identify our flora and fauna such as Sturt's Desert Rose, the eagle, kangaroo etc. We do have those in our emblem but I am not sure whether they are fully recognised. I would like to see that matter covered in legislation.

Mr HATTON: There is a legislative basis for those emblems at the moment.

Mr NICHOLSON: That relates to the self-governing Northern Territory. Whether it would be the same for a new state is a ...

Mr FORSCUTT: Thank you. Probably, I am duplicating matters that you have looked at already.

I refer also to letters patent constituting the land, waters and islands of the Northern Territory. It is very important, if it has not been done already, for that to be identified so that we know exactly what we are talking about when we refer to the Northern Territory.

Mr HATTON: That is a matter that we wish to discuss with the Commonwealth. There are areas such as the Ashmore and Cartier Islands of course.

Mr FORSCUTT: Sure. What brought it to mind was that I saw an article on Dawn Lawrie and I thought that they come under the Territory.

Mr HATTON: Only in respect of federal elections.

Mr FORSCUTT: Yes.

I would like to see freedom of information included in the Northern Territory constitution. You might not agree with me.

Mr HATTON: That is not a constitutional matter. It is dealt with by way of legislation.

Mr FORSCUTT: I raise that as a matter of concern.

There is also matter of a Bill of Rights. I believe that, for too long, people have not really known what their rights are. I think they should be spelt out in the clearest terms.

I also want to see local government given recognition within the constitution as the third tier of government. I think that is very important.

Mr HATTON: Both of those matters are in here.

Mr FORSCUTT: I appreciate that. All I am saying is that I support that.

Another matter is precedence. Is the Administrator the head man in the Northern Territory at this stage? I presume that the Chief Minister is second and the Speaker of the Legislative Assembly third. I would like to see an order of precedence included so that it is made quite clear.

Mr HATTON: There is a table of precedence now.

Mr FORSCUTT: But I would like to see it in the constitution as a matter of course.

Mr HATTON: It may not appear in the constitution because it relates to all sorts of people such as ministers of religion etc.

Mr FORSCUTT: I do not care if you take the first 50. My point is that it should be there so that there cannot be a change in the future without the people knowing about it.

When we become a state, sections of the Australian Constitution that do not pertain to us as a territory will pertain to us. That relates particularly to section 100 and section 92. Mr Chairman, thank you for your time. Now that I have some more material to read, I will think about the issues and endeavour to put something else together for you.

Mr SETTER: Have you got this one, Jim?

Mr FORSCUTT: Yes. I think it was sent to council. It would be on file.

Mr HATTON: That is a key document.

Mr FORSCUTT: Are there any questions that you wish to ask me at this stage?

Mr HATTON: You referred to the matter of the recognition of local government and I anticipate that that will be a matter for significant debate. I realise that you are not here as a representative of local government.

Mr FORSCUTT: 80% of the constituents of the Northern Territory are controlled in some way by a local government or a community government.

Mr HATTON: Most state constitutions provide a recognition for local government.

Mr FORSCUTT: But the federal Constitution does not?

Mr HATTON: No.

What form of recognition are you talking about? Is it a recognition that local government has a role or are you talking about recognition of the right of citizens to have local government? Would there be a compulsion to provide a form of local government for all citizens or would it be optional? There are areas of the Northern Territory which do not have local government.

Mr FORSCUTT: Yes. I am referring to those that do. I do not want to get into a debate with you. To a degree, local government was forced on many of the communities. I would like to see the whole of the Northern Territory become a state. The terms of that do not make any difference to me. The whole of the Territory should be in that state. As for the matter of local government, I would say that it needs to be recognised in the strongest terms and the devolutionary aspects can be considered at some stage.

Mr HATTON: Yes. There are a series of questions that arise in relation to that. I am not asking you as a representative of local government.

Mr FORSCUTT: No. I could not give it to you.

Mr HATTON: Perhaps the local government community in particular could consider whether the division of powers between the state and local government should be spelt out in the constitution. Should there be a requirement to provide some form of local government, be it community government or local government or shire government, for all areas of the Northern Territory or should we provide a vehicle that would enable it to expand as the communities want it to expand by giving them a right without a compulsion? There are a number of questions involved that perhaps we can wrestle with over the course of the next few months.

Mr SETTER: Jim, could I refer you to page 90 of this booklet? The heading is 'Local Government'. I will quote from paragraphs 5 and 6:

The select committee notes the special situation of the Northern Territory where vast areas are not within any local government area. Other areas are covered by community government schemes. Any decision to extend local government or community government is appropriately a matter for the new state in consultation with the local residents. Constitutional recognition of local government must take into account the special situation of the Territory and the associated difficulties of administration.

Subject to these considerations, the select committee favours some constitutional provisions for the recognition of local government in the new state. It invites public comment on the nature of those provisions.

Mr FORSCUTT: Yes. I have those marked and I will endeavour to address them.

Mr HATTON: Would anybody like to raise any questions?

Ms ROUBICEK: Are those discussion papers available?

Mr HATTON: Yes they are. There are other discussion papers available to the community which do not deal specifically with the constitution but are relevant because they deal with issues such as land matters upon statehood and, potentially, such matters will have significant constitutional implications: land rights, Commonwealth land being held for state-type purposes at the moment, minerals and energy resources and national parks. There are other papers dealing with those questions. We are happy to make them available to you.

Mr FORSCUTT: In relation to explaining the overall context of statehood to the people, which is not a direct role of this committee but is a part of the ongoing process, what is being done to make people aware of the whole deal and its best potential?

Mr HATTON: That is the aim of this literature that has been produced. Inevitably, as people discuss what they want as a society and what they may be able to achieve as a society, the other aspects will flow from that. As they discuss their constitution, they will discuss what can and cannot be done.

Mr FORSCUTT: With respect, the 2 biggest questions that are being raised by people is what it will cost and whether there are sufficient people to constitute a state.

Mr HATTON: I would be happy to address those now if you like.

Mr FORSCUTT: I was not aware that you were dealing with those sorts of areas as such.

Mr HATTON: People have been saying to us that they do not trust the Northern Territory in relation to land rights. All sorts of issues have been raised and in no way are we attempting to dodge them.

Mr FORSCUTT: In respect of statehood, people are asking me continually what it will cost us and whether we have enough people to constitute a state. As the committee would be aware,

South Australia entered federation with 100 000 people many years ago and I believe the Northern Territory has a population of some 145 000.

Mr HATTON: 175 000.

Mr FORSCUTT: I stand corrected.

I read in a book called 'Kings in Glass Castles' that Queensland entered the federation with a population of 25 000 and with 7½ pence in the bank. I do not think that the Territory is broke at this stage. I hope it is not.

Mr HATTON: Far from it.

Mr FORSCUTT: Those are the 2 questions that are uppermost in people's minds.

Mr HATTON: Perhaps if I could deal with those. Firstly, the size of the population of the Northern Territory is absolutely irrelevant to the question of statehood. You were correct in saying that, when the existing states became self-governing colonies, they had fewer people than we have at the moment and they also had less technology available to assist them in governing vast areas. They did not have aeroplanes and telecommunications. We have in place a legislature, the administrative infrastructure, the public service, the hospitals, the schools, the courts, the police etc. All the infrastructure that is essential for a state is there already. Territorians are taxed at the same level and face the same mix of taxes as people in the states.

Since 1 July 1988, the funding received by the Territory is calculated exactly as if we were a state. The funding comes from the common tax-sharing pool. Our share is calculated at the same time and by the same body that calculates those for the states: the Grants Commission in its relativities review. The same factors and formulas are applied to the Territory as to the states. The Grants Commission determines what it will cost to provide a range of services and facilities that is standard throughout Australia. It costs more to do that in the Territory than in Sydney because of our vast and sparsely populated area. To provide a teacher to an Aboriginal outstation costs much more than providing one in Darwin and certainly much more than providing one in Sydney. The Grants Commission calculates all those costs. It then determines our revenue-raising capacity based on standard charges and taxes and provides us with the difference between those 2 figures. People forget that all the states in Australia receive an average of 60% of their money from the federal government.

Mr FORSCUTT: Thank you. That was the next question that I intended to ask. People in the community say that, per head of population, the Territory is being well and truly looked after by the Commonwealth. You have answered that question.

Mr SETTER: As Steve mentioned, 60% is the average for the states but New South Wales might receive 55% and a small state such as Tasmania might receive 70%.

Mr FORSCUTT: If we are being charged the same level of rates and taxes as the states, why don't we receive fair representation in the federal Parliament?

Mr HATTON: Because we are not a state.

Mr FORSCUTT: Right. When we become a state, I believe that our representation in the Upper House should be the same as that of the other states.

Mr SETTER: We do not have the same constitutional benefits and rights as other Australian citizens.

Mr FORSCUTT: Well, no taxation without fair representation.

Ms ROUBICEK: I presume that the committee has not yet reached any conclusions but I hope that representation will be on a par with that of the existing states. What do members of the committee feel about that?

Mr HATTON: Each can speak for himself. My view is that, if we are to become a state, we should become a state in the true sense of the word and we should have equality with other Australians. Part of that equality is equal representation in the states' House. Size of population is irrelevant to that. I support the view that we should have equal representation in the Senate. In my view, that is the only just solution. I suspect that the political reality will be - and you have heard Mr Setter talking about section 121 - that to achieve that equal representation may need to be phased in. I suspect that there may be a phasing in of Senate representation. However, I would not be prepared to stand before the people and say that I have made the Territory a second-class state for ever. I would never do that. We must work towards full equality and not become, to use a hackneyed phrase, a Clayton's state.

Mr SETTER: There is no doubt that, in the long term, the Territory must achieve equal representation and we must lock that in in some way when we achieve statehood. The Senate, of course, is the states' House in which all the states are equally represented. At the moment each state has 12 Senators and there is a nexus between the number of members in the House of Representatives and the number of Senators. The number of members in the House of Representatives is approximately twice that in the Senate. However, they are distributed on the basis of population and therefore the number for each state varies.

I have spoken to many interstate politicians and the political reality is that they are very concerned that, if the Territory immediately achieved 12 Senators, that would mean approximately an additional 24 members of the House of Representative. Their concern is where those additional seats would be created and which political party would benefit. That is the bottom line. My view is that we must accept that we may have to move to statehood with fewer Senators than 12.

Mr HATTON: But with a guarantee that the number would increase.

Mr SETTER: That is right. There would need to be a formula, on the basis of time span or population growth, to achieve 12 Senators at some stage in the future.

Ms ROUBICEK: But we have had written guarantees from the federal government in the past.

Mr HATTON: It would need to be written into the Northern Territory Constitution Act.

Ms ROUBICEK: Entrenched. We thought other things were entrenched too.

Mr HATTON: No. They were simply agreements.

Ms ROUBICEK: Were they?

Mr HATTON: They were memorandums of understandings. They were not even acts of parliament.

Mr SETTER: They were not much better than a handshake.

Ms ROUBICEK: Some handshakes are better than others.

Mr HATTON: Yes. It depends on whose hand you are shaking.

Mr LANHUPUY: The Labor Party supports equal representation with the other states. Because we are taxed at the same rate as the states, our representation should be the same.

Ms ROUBICEK: Do you believe that the federal government will grant us statehood or do you think that we need to have a referendum and an education process down south?

Mr HATTON: The federal government has said that they will take the Northern Territory to statehood when it has been demonstrated that the people of the Northern Territory want it. I suspect that that means when we have had a referendum and the people have voted in favour of it. There has to be a clearly expressed desire of the people of the Northern Territory to take that step before the federal parliament will react to it. Certainly, with the current federal government, that is the position that the Prime Minister has put in writing to the Northern Territory government.

Ms ROUBICEK: Is it clear that the public wants statehood? Is that the feeling that you get when you travel around?

Mr HATTON: No. People do not understand enough about it. People are reluctant to enter into something that they know nothing about. Our job will be to explain it to the community as fully as possible so that people know what they are embarking on. When that has been achieved, I think that you will find that the community will want to take that step. However, in the absence of clearly defined answers to their questions - and the making of a constitution is a part of a clearly defined answer - I don't think there would be an overwhelming support in the community to move now.

Ms ROUBICEK: But the same was true before self-government.

Mr HATTON: Yes, but that was able to be done by a simple act of the federal Parliament and the Northern Territory people were not asked.

Ms ROUBICEK: No, but they were educated a little.

Mr HATTON: After the event.

Ms ROUBICEK: And prior to that.

Mr SETTER: That was one of the issues at an election at the time. From memory, that was a fairly close election.

Mr HATTON: I do not think anyone of us wants to go to an election campaign over the issue of statehood.

Ms ROUBICEK: Not at this stage.

Mr HATTON: Neither side would want to do that.

Ms ROUBICEK: Thank you.

Mr CHOLSH: I have one question. How will the constitution affect the Territory's powers in relation to land rights?

Mr HATTON: One of the critical questions being asked, particularly among the Aboriginal communities, is what guarantee they will have that their land rights will be protected when the Northern Territory becomes a state. There is no doubt that the position that is being adopted is that, with the Northern Territory becoming an equal partner with every other part of Australia, the Land Rights Act would be patriated to the Northern Territory. The land options paper that I referred to earlier deals with such questions. I am happy to make a copy available to you.

It states clearly that the aim is to guarantee a retention of land rights, a retention of Aboriginal ownership of their land. There are recommended procedures to ensure that protection. It also suggests that what we should be doing is talking to the Northern Territory community, the Aboriginal community in particular, about what sort of a Land Rights Act they want. Should the structure of the existing Land Rights Act be changed? Are there different ways of doing things that may evolve? No fixed position has been adopted as to what the nature of land rights should be. It is a matter that should be sorted out by all Territorians. One question that is important for this committee is whether some concept of Aboriginal land rights should be entrenched in the constitution of the new state. That is a question that is before the committee at the moment.

Mr SETTER: At page 93 of that document, the committee says that one option that is favoured by it is to entrench the guarantee of the ownership of Aboriginal lands in the new state constitution such that it can be amended only by following specified procedures. The extent of the guarantees and the degree of entrenchment are matters on which public comment is invited. We must bear in mind that the existing Land Rights Act is an act of the Commonwealth parliament. It would be patriated to the Northern Territory. In fact, the Northern Territory government has already approached the Commonwealth government for that transfer. I suspect that the ownership of land by Aboriginals would be entrenched in some form in the constitution ...

Mr HATTON: In fact, it may even strengthen the Aboriginal people's position.

Mr SETTER: ... as opposed to entrenching the Aboriginal Land Rights Act as such.

Mr HATTON: That is a conceptual idea and we are no further advanced than that at this stage. There are some meaty questions there to wrestle with, aren't there?

Mr SETTER: It is worth noting that, if the Northern Territory is ever to succeed in its move towards constitutional development and eventual statehood, that move must have the support of the majority of Aboriginal people because they constitute almost 25% of the population.

Mr HATTON: As well as the majority of non-Aboriginal people. It will make the Northern Territory community confront the reality of its people and the matter of making a place for everybody. That is what this process in fact involves.

If there are no other matters that anyone would like to raise, I will formally close these proceedings. I thank you for your attendance. I hope you have gained an insight into where we are going and that we have encouraged you to put your thinking caps on, to talk about some of these matters and to develop views in relation to them so that, when we have the opportunity in the future to come back, we will obtain some positive views from the community. We invite you all to contact us if you wish more information. Mr Rick Gray is the executive officer for this select committee. We have a toll free telephone line and he can give you the number. I think it is in that book.

Mr GRAY: It is 008 189 117.

Mr HATTON: That is the number to ring if you with any further information or documentation. We may even be able to arrange for someone to travel here to address particular matters that you may wish discuss. I invite you to take advantage of those opportunities. Thank you very much for coming.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

MATARANKA — Thursday 16 March 1989

PRESENT:

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr Des FISHLOCK
Mr W. MUNUMA
Mr T. WORTHINGTON-AYRE
Mr Jimmy ASHLEY
Mr Lindsay JOSHUA
Mr Wilfred PONTO
Mr George WULKI
Mr Mark DAVIDSON
Ms Wendy CLARK

Also present:

Ms Sandra FISHLOCK
Mr Mark WELLINGTON
Mr Pongi MUNYNGUNN

Mr Mick ASHLEY
Mr Nayingi DAYLIGHT
Mr Jacob GAGAEW

NOTE: This is a verbatim transcript that has been tape-checked.

Mr HATTON: Ladies and gentlemen, if I could have your attention please. Thank you for coming along this morning. It being a work day and all the rest of it, it throws you out a bit but we are very appreciative of you coming here to give us a chance to speak with you. If I could introduce myself, I am Steve Hatton. I am the Chairman of this Northern Territory Legislative Assembly committee. It is called the Select Committee on Constitutional Development. There are 6 of us on this committee and you will see in the back of that booklet you have got all the members of the committee shown there with our photos. It is a unique committee in the Assembly because it is the only committee we have got that has got the same numbers of ALP and CLP. It has got 3 ALP and 3 CLP members. That is because what we are talking about is not a matter that is a fight between Labor and the CLP. It is a bipartisan issue. I have with me 2 of the committee members today - Wesley Lanhupuy, the member for Arnhem, and Rick Setter, the member for Jingili - and we are going around the Northern Territory this next couple of months trying to get people to start thinking about what we think is one of the most important things that will ever be confronting the Northern Territory.

Before we do that, I would like to make one thing clear. We are not going around saying to you or asking you, 'Do you think we should become a state or not become a state?' That is not the question we are dealing with. There is a lot of arguments about whether we should be a state today or whether we should be a state in 5 years or 10 years or 20 years time. Some people think it is too soon and some people think it should be later. What we all must accept is that, one day, the Northern Territory will become a state. Whether it is next year or in 5 years or 10 years or in 20 years, one day the Northern Territory will be a state. But before we can even think about that, we need to sit down as a community and say: 'Okay, what sort of a society do we want the Northern Territory to be? What do we want it to be like?' And you do that through writing a constitution. That is where you set out the framework, the rules, that lead to the direction the Northern Territory as a society is going to go: what rights do you have, what responsibilities do you have, what sort of a parliament do you have? And you build all of that into your constitution.

Many communities, like Mataranka, have moved to become a community government. Before you could even think about that, the first thing you had to work out is how you wanted it to operate and write a set of rules around it, to write your community government constitution. The same thing applies with the Northern Territory. And only after we have done all that can we even think about the other steps of becoming a state. We have got to get our rules right first. We can only do that if we involve all the people of the Northern Territory - that is, Aboriginal and non-Aboriginal - and write a people's law that applies for everybody so we can work out how we are going to live and work together in the future. And that is what we are working at. We are going around now saying that this process is happening. We want you as communities to think about it, discuss it among yourselves so that, when you are in a position to give us your views, either in writing or when we come back next time and you have had a chance to think about some of the issues, and say: 'We think this or we think that or we think something else'. We can then go away and do the first part of 3 steps.

Our job first is to prepare what we call a recommended draft constitution. We will take that to the Legislative Assembly. We are going to try and get that ready by April next year. Wesley will have a talk in a minute too, okay?

UNIDENTIFIED: You speaking too hard. Speaking too hard for some people here.

Mr HATTON: Speaking too hard. Okay. I will slow it down a bit too.

We are doing 3 things. Once we have prepared that, we also want to form a committee of Northern Territory people. There might be 50, 60, 70 people on that committee from representatives all over the Territory, of all different people and their job will be to take our work and talk it through and maybe change it or accept it or whatever and then, when they have finished their job, that recommended constitution will then go to a vote for all the Northern Territory people to accept or reject. That is 3 steps. We are just at stage 1. We are just trying to find out what the community thinks, get all the information and prepare a first recommendation on what should go in the constitution and a second suggestion on who should make up that committee, that convention of people. So we are looking for views on 2 things: (1) what do you think should go in a constitution; and (2) who do you think should look at our work and say they like it or do not like it and how do we set that up? It is not going to happen quickly. It is going to take a lot of time and effort and work. There are going to be a lot of hard questions to be talked through. If we do not start now, we will never get the job done. That is really what it amounts to.

Bob, I just open up like that if I can. Wesley, perhaps you want to say a few words.

Mr LANHUPUY: Thanks Steve. Like Steve said, this committee is going around to a lot of the communities throughout the Northern Territory talking to Yolngu mob and balandas to try and get you mob to start thinking about this book. And this book, we hope, will one day tell us the parliament you people want in the local communities. There are a lot of things in it. It talks about powers to the people who make law for us, powers to the people in parliament and powers about representation for you people, who you want to go to Canberra for you. This paper here tells you the basic things that we are talking about or what we want from people throughout the Northern Territory.

Like Steve said, we are going to do it in 3 stages. One is what we are doing now. We are going around to as many communities as we can to get views of what you see may be important for our constitution for the Territory. Number 2 is that we hope to get as many people from the Northern Territory to form a big convention where the Aboriginal people have representatives - the Europeans, the pastoralists, the women's side - everyone will be there, will come together and have a look at some of the laws that we think should make up our constitution. And once that is done and everyone agrees about certain things in this constitution, then it goes back to the people of the Territory and you take a vote on it - whether to say yes or no for it. And the most important thing that I think most of us should realise is the fact that, one of these days, we will have statehood. That is important because there is a feeling in the government at the moment and in both parties that we should have our own statehood where we could control our own lives. That is why this committee is going around to ask you people about your views that we can put in this book. I think it is important that what we are doing now is talking to you, at least getting the community to think about it so you can have some ideas that, when we come back next time, you can then put to the committee what your views are or your community's views are. It is important that we get as many people as possible talking to us about it.

Mr HATTON: We will start talking in a minute. If I can get Mr Rick Setter to say a couple of words too, then we all start talking, we find out, just talk.

(Unidentified people speaking in an Aboriginal language).

Mr SETTER: This committee has been in place now for about 3 years and an awful lot of work has already been done because, as a committee, we have sat down on many many occasions and discussed the issue of the development of the constitution and you will find that this booklet here, which is a discussion paper on proposed new state constitution for the Northern Territory, is the result of those many hours of discussions. And it is an options paper and, if you read through that, you will find that there are a whole range of proposals put forward and, in some cases, there are different options. You know, you could either do it this way or that way or perhaps another way. But that is for the constitutional convention to eventually decide. We are now going through the phase of meeting with communities, discussing it with communities and receiving feedback and some input. I would recommend to everybody that they read through that booklet because it really sets out, perhaps in some ways technical terms, what we are all about. We have got to think about things like, for example, what sort of parliament we want. Do we want just a single parliament or do we want an Upper House as well - in other words, a Lower House and an Upper House? We need to think about the type of judiciary that we require - judges and magistrates and people like that - and what their relationship is going to be to the parliament and to the government. We need to talk about the executive of the government - for example, the type of ministry that we would like to see - and how local government and community government fits into that scenario. There is a whole range of issues like what protection is there going to be for Aboriginal people in the constitution. Aboriginal people make up close to 25% of the population of the Northern Territory and so their interests have to be addressed. There are things like human rights and a whole range of other issues. Bear in mind that the last state constitution that was put together in this country was something like 80 or 90 years ago, close to 90 years ago. 100 years ago, Steve said. So circumstances have changed dramatically in that time and so it is a whole new ball game.

Ms FISHLOCK: Which state was that?

Mr HATTON: The last state was probably Tasmania or Western Australia.

Mr SETTER: Tasmania it would have been.

Mr HATTON: They were actually colonial constitutions.

Mr SETTER: So if you think back 3 or 4 years, when the hype was about of 'let's move to statehood very quickly', the reality is when you sit down and think about and work it out, it is not an easy process at all. It is a very complex matter. Whilst governments could legislate very quickly - for example, the federal government could legislate tomorrow to create a state in the Northern Territory - there is no point in doing that unless that move has the support of the majority of Northern Territory people and that those people have had the opportunity to have some input into that whole process. And that is what this all about - coming to meet with the communities, talking to people, receiving the input which we will go back and consider and, as Steve pointed out, we will move to a constitutional convention at some time in the next 12 months or so when all of these options will be considered and, from that, will flow the development of a full constitution for the Northern Territory. Today, you are part of that consultative process.

Mr HATTON: Thanks Rick. Perhaps the easy way is that, if you have got any questions, you throw them at us. It is better if we talk about anything that is in your mind. Actually we will just start talking about some of the things here and you ask questions about what we are doing and how we go about it. What we would really like is for you to go back to your community, sit down and talk and think through it in your own community and then, later on, you come and tell us about it or when we go out to see you and you tell us what you have been thinking. It takes time. It is going to take a lot of talk, we know that.

Mr WORTHINGTON-AYRE: Mr Hatton, what is the number of inhabitants in all the Northern Territory now?

Mr HATTON: About 175 000 people.

Mr WORTHINGTON-AYRE: 175 000. What percentage of those would be Aborigines?

Mr HATTON: About 22%.

Mr WORTHINGTON-AYRE: 22% is Aboriginal and what of the federal constitutional requirements for the number of inhabitants of the Northern Territory to become a state?

Mr HATTON: To become a state? It is irrelevant. It does not matter.

Mr WORTHINGTON-AYRE: The way is quite clear in all your studies for the Northern Territory to form a written constitution?

Mr HATTON: There is no population limitation.

Mr WORTHINGTON-AYRE: What are the federal conditions that are holding it up.

Mr HATTON: What are the federal limitations?

Mr WORTHINGTON-AYRE: Limitations on the Territory?

Mr HATTON: About writing a constitution? It is an unknown factor. We are really walking in the dark. We are walking into unknown country in this whole process. It has never happened before in Australia. There are no rules - are there, Graham? - about us writing a constitution. We have got to make rules up ourselves as a community. Somehow we have got to work as a community through this. We are not even certain that we have the power under the Self-Government Act.

Mr WORTHINGTON-AYRE: Is there any number limits?

Mr HATTON: No.

Mr WORTHINGTON-AYRE: So the way is quite clear.

Mr HATTON: Yes. Population size is irrelevant. It does not matter.

Mr WORTHINGTON-AYRE: You have got to have a name for a state and a Governor.

Mr HATTON: Yes. It is up to the Northern Territory people to decide that.

Mr WORTHINGTON-AYRE: Put it together. The one thing that is required is to write it in a coherent legal wording.

Mr HATTON: Yes.

Mr WORTHINGTON-AYRE: Ah, the way is clear then. That should pretty well soon come together.

Mr HATTON: Well that is why it took us 3 years to produce that and that really is only the summary. Graham Nicholson, the man next to you, is our lawyer. He has done all the constitutional research and thinking to help us out. It was a book that thick when he did analysis of not only the Australian constitutions but looked all around the world at what is going on in constitutions and put all the ideas together. Then, we worked through as a committee and came up with this or that or something else. People all had different ideas. Questions that get asked are ones such as: 'Should there be a bill of rights like they have in America?'

Mr WORTHINGTON-AYRE: What about the White Australia Policy?

Mr HATTON: Yes. Well that is national. That is not Northern Territory.

Mr WORTHINGTON-AYRE: Yes, but that should be an important and essential part of the Northern Territory's constitution. I think so.

Mr HATTON: Well, we cannot write something into our constitution that is against the federal Constitution. That is the one limit we have got.

Mr WORTHINGTON-AYRE: You have got the voting rights.

Mr HATTON: Yes, but you are limited. The Australian Constitution is there and then the state constitution is set. For example, we cannot do away with royalty.

Mr WORTHINGTON-AYRE: That is what I was going to say.

Mr HATTON: We cannot do that because the Australian constitution says we have got a monarchical system. We are going to have to have a Governor and all that. There are those limits.

Mr WORTHINGTON-AYRE: You have got to have a church base to support the ...

Mr HATTON: As a community, we can work out whether we want to write in there things like freedom of religion.

Mr WORTHINGTON-AYRE: In the recent referendum, freedom of religion was rejected.

Mr HATTON: Some people think it is good to write them into the constitutions; other people think it is actually bad for you to do that. It might in fact limit your rights by writing them in. What was that case you told us about in Canada? They wrote into the Canadian constitution a law that said you cannot discriminate on the grounds of race or sex or age. Which is good law, right? But then a 35-year-old man went up on a carnal knowledge charge and he got off because it was against the constitution to be prosecuted because that was discriminating on the grounds of age. And that is the problem with writing them into the constitutions.

Mr WORTHINGTON-AYRE: What about the example of the recent American elections? Some of that is relevant to what is taken aboard. In the Bush campaign, they put up a big advertising campaign. They pointedly put the question to the USA English inhabitants that there was this contender for the presidency, where his family was born and so forth, indicating that the White House would be occupied by a foreign-born President in the predominantly English-American USA. That became a big factor in getting President Bush elected, the same as in Canada.

Mr HATTON: You cannot write things into a constitution that is going to change dirty politics.

Mr WORTHINGTON-AYRE: Well you can. What about the ...

Mr HATTON: The only way you can change that is with your vote.

Mr WORTHINGTON-AYRE: Of course, your vote. Yes. But what about Australia as a republic. With all due respect, the present Queen is a fully accepted person by myself in every way, and her family, but the delicate and unpleasant reality is that her marriage into half-caste foreigners and sitting on the throne of England and wearing the crown of England by half-cast foreign heir apparent is not acceptable to Australians.

Mr HATTON: Can I just say this. There are questions that affect the whole of Australia like should we become a republic or remain a monarchical system. There are questions like that. There are big questions that cover the whole of Australia. Now what we are saying is that those questions for the whole of Australia should be dealt with by the whole of Australia. We are looking at things that affect the Northern Territory within that. Now we must look at it like that or we will never get anywhere. I cannot change the national scene, or not as much as I would want to. But, understand this, what I want for the Northern Territory - and I am not talking now in my job as Chairman of the committee - is that we are the same as other Australians. I do not want any differences. I do not know why I should have less rights than other Australians. That is me as a person. I step back into my role as chairman of the committee.

Mr WORTHINGTON-AYRE: Well Australians in the majority have got to base all their laws on the predominantly reasonable purity of the English, British subject.

Mr HATTON: I am sorry. I am not going to continue a debate about ...

Mr WORTHINGTON-AYRE: There are not any bars in the way of putting the constitution together. That is the main thing, isn't it?

Mr HATTON: No. Except that you cannot go outside the Australian constitution. That is the point.

Mr NICHOLSON: Mick Ashley is the chairman of the Aboriginal community and he wants to say something about the rights of Aboriginal people in transient camps.

Mr ASHLEY: My name is Mick Ashley. (Inaudible) I want more house built up there and more Aboriginals ... live in the transient camp.

Mr HATTON: In the transient camp.

Mr ASHLEY: I want everything can be sent, all them houses, not them 2 houses, repair the 2 houses, close its toilets. Put a new one.

Mr HATTON: How many people are in the transient camp?

Mr ASHLEY: Mostly they keep coming in, going, coming and going.

Mr HATTON: Any one time. What 50 people?

Mr ASHLEY: People coming in and going.

Mr HATTON: About 100?

Mr ASHLEY: That is why I need more houses to keep all them sick people.

Mr HATTON: What we will do after we finish this meeting, perhaps through Wesley, Rick and myself, we can talk with you and go and have a look and talk to the council and just see what is happening and take that back to the minister. Okay?

Mr JOSHUA: My name is Joshua. I am from Numbulwar. We got it now. We got 4 statements right. (Speaks in an Aboriginal language) We do not want anybody to go to sacred sites. We can talk here human rights and Aboriginal rights. We have got a law there, we can always stand up for our rights. Am I right?

Mr HATTON: Yes.

Mr JOSHUA: We do not like anybody coming in our reserve and ruin our sacred sites.

Mr HATTON: No one is trying to. No one wants to.

Mr HATTON: I think that you are worried about this new sacred sites law. Is that what you are talking about? Mr JOSHUA: I am sore about that.

Mr HATTON: There are 2 things. One is that it is different from what I am talking about today but I am not going to go away from what you are asking because I know that it is worrying some people. What the Northern Territory government is saying is not that they want to damage your sacred sites. What they are saying is there are different ways to protect them. And what they say is that we want to make the law so that, if somebody wants to go into country, not land rights

land but on other land, and they might be a developer or miner, and we say it is law that they must go and talk to the man who has responsibility for the sites, the old man, the Aboriginal man. They must get his permission and he says he can go there or not to go there. So you do not have to tell all about the story of the site but you say, 'You go this way and not that way to avoid it', like they did with the pipeline. Remember when they came through and did not ask you about the site. They said, 'You come this way or that way', and they talked to the Aboriginal people, the law men and they worked through it.

Mr PONTO: Excuse me, can I ask one question? This new government will have separate councils. They told me that. Have you got an idea about that?

Mr HATTON: The different land councils?

Mr PONTO: A separate land council.

Mr HATTON: Yes.

Mr PONTO: We never vote for that... (inaudible) ... all them children at Hodgson Downs. Like Canberra for the old council. All those land councils.

Mr HATTON: That is the issue about the land councils, is it?

Mr WULKI: (Speaking an Aboriginal language).

Mr LANHUPUY: That is Aboriginal land council business. It is a business for you. Blackfella business. You have got to fix that one up and have big talks around the whole area.

Mr WORTHINGTON-AYRE: Mr Hatton, did you hear anything that happened with the Mataranka land ...

Mr HATTON: No, I have not.

Mr LANHUPUY: The reason why we are going around is to talk about this paper here.

Mr WORTHINGTON-AYRE: Are they talking about the Mataranka land council?

Mr HATTON: No, they are talking about the break away land councils.

Mr LANHUPUY: The land council business is for us to look at later on.

Mr WORTHINGTON-AYRE: Has anyone thought of a new name?

Mr HATTON: I would have thought the state of the Northern Territory. I do not want to change its name and I do not see any reason why we should.

Mr WORTHINGTON-AYRE: How about the Northern Territory.

Mr HATTON: Why not?

Mr SETTER: Most people feel the same way.

Mr HATTON: If people think it is good enough to call their state New South Wales or Queensland, why not the Northern Territory?

Ms FISHLOCK: If we leave it as the Northern Territory, it would save us an enormous amount of money on letterheads.

Mr HATTON: That is right.

I think the land council business is a separate thing and that is something you have got to talk out.

Mr JOSHUA: Different boundary like Australia. They have got a false boundary, you know. They come here and talk to blackfellow - what do we think about this new thing that has come up? If we are happy about our state, our Territory, good luck with the people in the Territory. That is it. Well if people are against, that is the finish.

Mr HATTON: But you have got to talk, haven't you?

Mr JOSHUA: Yes, that is right. Excuse me, we are aware of this in Mataranka area.

Mr HATTON: There are many many questions that we have got to talk about. That book, if you look in there, it asks a lot of questions too.

Mr JOSHUA: There is so much big English in that book.

Mr HATTON: Well, that is where we come out and we talk like this. We get Wesley to come out and talk in your communities, or myself or other people to come and talk. If you want information, if you want answers to questions, you can write and ask us or ring us up and we get talking. Then, you talk amongst yourselves. You say: 'I like this or I do not like that or whatever'. You tell us so that we can then take what all the different people are telling us. Mr JOSHUA: Yes, we are aware of this. As I said, eastern Arnhem, we are aware of this statehood. We know that this is going to come one day. It is going to happen one day.

Mr HATTON: So we may as well think about it. One thing that is important when we do think about it. We all sort of think about things from ourselves, don't we? We think, 'I like this for me'. But, in the end, we must think that, okay, there are all sorts of different people in the Northern Territory and what we have to think towards is something that is going to be okay for everyone - black and white, everyone.

Mr WORTHINGTON-AYRE: I was listening to Chief Minister Perron on the television the other day about those conditions that he requires from the federal ...

Mr HATTON: If I can pick that up because it is important to a lot of people. There are 2 things going on side by side and they are not in conflict. The Chief Minister is saying there are powers that the Northern Territory does not have that the states have and he is looking to get those transferred across to the Northern Territory by amending the Self-Government Act, but we would still be a territory. That is sort of phasing powers across. The different things that he has raised, you have heard about them and talked about them. He is negotiating with the federal government

for that now. Even if we get all the powers in the Self-Government Act, the same as the states have got, it would not make us a state. We still would not have the protection of the Australian Constitution as a state.

We would be still in the situation where, at the whim of the federal government - right now it is technically possible for the federal government, by amending one line in a regulation under a federal act of parliament, for example, to wipe out the entire Northern Territory education system. That is not guaranteed. They could, by a repealing act of parliament, remove all government and your rights to vote on anything for the Northern Territory. You do not have your rights entrenched constitutionally. You can only get that by becoming a state. That is the shift in constitutional rights rather than - I will use an example. It is like when you are a child, your parents tell you that you can do this and you can do that and they guide you and help you. You come into adolescence and they start giving you a bit more freedom. You start to think and act for yourself but the parents are still there to guide you. Then, you step into adulthood and you stand on your own feet and you run your own life.

It is the same thing in going from where we were into self-government and into statehood. You are not going to get more money and you are not going to have less money but you are going to have a right to decide on your own future, the same as everybody else in this country.

Mr WORTHINGTON-AYRE: The Northern Territory people have got a right here.

Mr HATTON: Yes. That is right. That is a really important step to take. Let us think about it and make sure everyone takes the opportunity to have a say on those sorts of things.

Mr WORTHINGTON-AYRE: It only needs a bit of cooperation all round.

Mr HATTON: If people can sit and talk together like we are now and we can do that throughout the Territory, it will start to ...

Ms FISHLOCK: What is the federal government's feelings about the Northern Territory becoming a state.

Mr HATTON: Non-committal. Would that be a fair description?

(Inaudible sotto voce conversation).

Mr JOSHUA: I am sorry ...

Mr HATTON: No, that is all right. Do you want to grab one of these books?

I think non-committal is the best description. They are saying that, if the Northern Territory people say that they want to become a state, then okay they will move that way. But, until they are satisfied that it is something that the Territory people want, they will just sit back. It is up to the Territory people to say that we want to now move to become a state. The Territory people will not do that until they know what they are going to walk into.

Mr JOSHUA: Steve, if we do one day become a state, will we still be under Commonwealth control or what?

Mr HATTON: The Commonwealth government will still have power, the same as it does everywhere else in Australia. But, it will not have any more than it has elsewhere in Australia. The federal government is still there. The federal government still has power in New South Wales and Queensland, doesn't it?

Mr JOSHUA: I am just wondering.

Mr HATTON: But they have more power here than they have got in Queensland and we are saying that they should have the same and not more.

Mr JOSHUA: Maybe Bob Hawke will come over here and sit in the Territory land and probably run the whole show here. I was wondering who is going to have the power.

Mr HATTON: You. The Territory people. That is what we are saying.

Mr JOSHUA: Yes.

Mr SETTER: Through your elected representatives.

Mr JOSHUA: A lot of people worry. A lot of old people worry too.

Mr HATTON: There is a lot of concern, I know. People are nervous about it. Yolgnu people do not really trust the Northern Territory government too much. They sit around saying: 'Hey, what is going to happen?' There have been a lot of wrong things said. It has frightened people and they are worried that their land is going to be taken away from them for one thing, aren't they?

Mr JOSHUA: It is not the land.

Mr HATTON: Well, it is not going to be but we know that is what people think.

Mr JOSHUA: Your policy, I am pretty sure is going to happen one day. We have got to think about where we are going to get on that. ... Inaudible ... (Speaks an Aboriginal language).

Mr HATTON: Well, how do you make sure you have got the rights?.

Mr SETTER: What we believe or what I believe is that it is better for Northern Territory people to be making their own decisions about their own destiny here in the Territory so that you have got input and everybody has got input through their elected representatives like Wesley. It is much better to have it that way than having people in Canberra making decisions on our behalf, people who live down there and who do not understand.

Mr HATTON: They are bossing you around.

Mr SETTER: It is much better that we make the decisions here.

Mr WULKI: This is just too bad when you look at it.

(Speaks in an Aboriginal language).

Mr HATTON: You read that book. That talks about it.

Mr LANHUPUY: If you understand that there is other people out there who do not ...

Mr WULKI: (Speaks in an Aboriginal language).

Mr LANHUPUY: Talk about it so that when we come back next ...

Mr HATTON: Take the other books too. Get the other books and look at all the different things. There are many things.

Mr WORTHINGTON-AYRE: Who are the persons preparing to write it now, to put a constitution together.

Mr HATTON: It will be our committee initially. Mr Nicholson there is our major legal adviser and, if he thinks he needs further legal advice, he goes and hires it outside. But, that is where our writing will be done by us after we complete this process. We are not just asking what do you think should go into it now. We are also asking you how you think we should put together this constitutional convention of Territory people. That is like a giant drafting committee. We want your views on that too. How do you make sure it is representative?

Mr WORTHINGTON-AYRE: For the Houses and the governorship, there are no bounds. It is just a matter of putting the writing together now.

Mr HATTON: If you want more detail on that, you get this book. This deals with all of those sorts of issues.

Mr WORTHINGTON-AYRE: Have you got any of those?

Mr HATTON: Yes. They deal in more detail with the sort of issues you are raising - things like what you can do and what you cannot do, what the limitations of the Australia Act and the Federal Constitution are and where you have got a choice.

Mr WORTHINGTON-AYRE: You have got to have it word perfect?

Mr HATTON: We would like to think that we could have it spot on first go, but I do not think we will.

Mr WORTHINGTON-AYRE: Reasonably enough.

Mr DAVIDSON: From state to state, how much do the constitutions vary.

Mr HATTON: Graham, do you want to deal with that?

Mr DAVIDSON: Obviously because of our demography - we have our population build up - we have got a different story to write down. But, how much do the states differ?

Mr NICHOLSON: The state constitutions were all made essentially in the 19th century and they are all very similar. The committee's view is that they are not appropriate ... (Inaudible).

Mr DAVIDSON: So we are going to be sort of setting a precedent, a new line to take?

Mr HATTON: Yes.

Mr LANHUPUY: Like Steve said earlier, there has not been a constitution for over 100 years.

Mr HATTON: There have been a lot of changes in community attitudes in that period.

Mr SETTER: That is right and that is why we are going through this exercise. It would be simple enough to use the other state constitutions as a basis - you just extract from them and write one very quickly. I mean you could do that easily. This is more complex because of the fact that it is 100 years since they were written.

Mr DAVIDSON: How much interest is there from the other states in this statehood. I mean Premiers and ...

Mr HATTON: I have spoken to most of the Premiers over the last 2 or 3 years about it. There is an interest in the subject but very much people recognise that, at this stage, it is a matter for the Territory people to come to grips with. Everyone accepts that it is going to happen one day. The question they ask is when, not if. They have got past the if; it is now when. That is everywhere. They will certainly have an interest - not in this process - but they will have an interest when it comes to things like powers and representation. That is when they will look at their own vested interests in that debate then.

Mr SETTER: I believe that, at the moment, they do not have a great interest in it at all because they are too busy looking after their own backyards. But, I think, in the future, when we come with a firm proposal, that this is what we would like to do, that is when they will be interested.

Mr HATTON: The question of money is one that goes through everyone's mind and scares everyone.

Mr DAVIDSON: Yes. My main concern is if, once it is set up and there is this constitution and that is the law, and then, all of a sudden, 5 years later, you say: 'Oh dear, we should not have done that. We should not have had that clause in there'. To change a constitution is a big process.

Mr HATTON: You have got to write in the rules on how you change it. That is one of the rules you write in.

Mr DAVIDSON: Right.

Mr HATTON: Your amendment provisions are part of what you write into your constitution. It has got to have the capacity to be changed. Mr DAVIDSON: Oh, for sure. It has to be able to be changed, but the process of changing it ...

Mr HATTON: I do not believe the Territory people would accept what happens in most of the states. The constitutions are actually acts of parliament and they amend them by just amending the act through the state parliament.

Mr DAVIDSON: But then, will our constitution be more up to date than those 100 years old?

Mr HATTON: Yes, we should be a lot more up to date.

Mr DAVIDSON: Are they?

Mr HATTON: No, they have not been.

Ms CLARK: If there is a referendum, the yes question never wins anyway.

Mr HATTON: It does. Australians are very conservative and they will not go along with a change unless they understand it and, if they understand it, only if they agree with it - particularly something that is as basic and important as a constitution. Now the same thing will apply for us when we are trying to write one for the first time. People are not going to accept it until they have really come to grips with it. That is why I think we have got an obligation to spend a lot of time and effort like this going around and introducing the topic, talking it through and guiding people to understand it, and drawing information properly.

Mr DAVIDSON: I think the big plus for it that I can see at the moment is the fact that both the major political powers have got together. It is not just the CLP saying, 'All right, this is the constitution that we will make up'. Obviously, when it was made up 100 years ago, there was one set body and all thinking the same sort of thing. When referendums come up, you have one party saying, 'Vote no on this one', and the other one saying, 'Vote yes'. Obviously, you confuse the people and that is where people say, 'If in doubt, say no'. Perhaps, this being a joint venture, there is going to be less likelihood of that sort of conflict coming on later.

Mr HATTON: We hope so.

Mr DAVIDSON: Well, we hope so. Yes.

Mr HATTON: The issues are too important to be getting caught up in party politics. That is what it comes down to.

Mr WORTHINGTON-AYRE: Would there be any taxation changes?

Mr HATTON: No. On the issue of statehood, I can say categorically that there would be no increased taxes and no new taxes as a consequence of statehood. I am not going to say taxes will never increase. Death and taxes are always with us and that is a fact of life. But, it will not be because of statehood, and I will tell you why. What you do not realise is that, today, we are

funded and we are paying taxes as if we were a state. The Memorandum of Understanding on the special arrangements for self-government stopped on 1 July last year. From that time, our money came from the same pot of money as all the states'. Our share of it was calculated by the same body, the Grants Commission, using the same formulas, the same assessment methods as they did for the states. There are no special deals.

We already have in place a parliament and elected members. We already have in place the full infrastructure of a public service, public administration. We already have the judicial court system in place throughout the Territory - we have got all of the infrastructure on the ground now. All the taxes and charges now are in line with the sort of taxes that are being charged elsewhere in Australia. We have already accepted or have been given all the responsibilities financially of a state. What we do not have is all the rights.

Mr WORTHINGTON-AYRE: All we need now is some brains trust to put it into ...

Mr HATTON: There is no money argument over statehood. That is one of the great fallacies of the whole debate. If you think of it, it is all there, isn't it?

Mr SETTER: Apart from those several powers that Marshall Perron is now asking to be transferred to the Northern Territory, we are effectively operating as a state.

Mr DAVIDSON: But we work under the federal Constitution.

Mr SETTER: Yes, but we do not have the same rights.

Mr HATTON: If we could sort out with the federal government, for example, how to handle the transfer of the industrial relations power - it is a very complex one - and that was transferred across, it would be sensible to do it as a staged transfer of functions because it would give the whole of our infrastructure time to adjust to handle that, without it all hitting in one go. So, you can phase in the transfer of powers, phase in those functions, and it would give the time to adjust your submissions and your calculations for the Grants Commission to obtain the necessary funding to do that, to cope with that. You phase those in. You make a constitutional shift at some stage, at the appropriate time, and then your rights are protected. Then, you look at the issues of representation.

Mr MUNUMA: (Inaudible).

Mr HATTON: It is not going to be quick.

Mr LANHUPUY: We have not got a definite time for the constitution to be finalised or for this work to be finished. What we are asking is for people to talk about it and see if it is all right with you mob what time we should have this constitution. Then, we will have it. There is no time frame for it.

Mr JOSHUA: (speaking in an Aboriginal language).

Mr HATTON: We think the process, if it goes smoothly, you are looking at about 3 years to produce a constitution.

Mr JOSHUA: Excuse me.

Mr HATTON: If it goes smoothly.

Mr WORTHINGTON-AYRE: Mr Hatton, what sort of opening preamble would you have to adopt? Something like the constitution of 1901?.

Mr HATTON: That is one of the questions that we are asking you.

Mr WORTHINGTON-AYRE: Would we follow that?

Mr HATTON: There is a range of issues that have been raised.

Mr WORTHINGTON-AYRE: Do you follow that constitution?

Mr HATTON: Or something similar. It is possible to put a preamble in. That is one of the questions that we are asking communities to think about.

One question that was raised, and it is brought up in the discussion book, is should there be something in the preamble that recognises the special place that Aboriginal people have, should there be some constitutional recognition of Aboriginal people's prior occupation? I mean it is a question that has been asked. Should that be recognised in a constitution of the Northern Territory? That would be the first one in Australia to actually recognise the special indigenous place of Aboriginal people.

Another question that has been asked is whether there should be some entrenchment of land rights in that constitution. And there are all sorts of arguments for and against that, but it is being asked. You have to sit and you have to think about it and come forward with views on what is acceptable and what is unacceptable and how you deal with these questions. They are there; you cannot ignore them.

Mr WORTHINGTON-AYRE: As long as it looks like it is coming together. If you have the brains trust concentrating on it, it must come to together.

Mr HATTON: That is right.

Mr DAVIDSON: Let us say, for example, that all goes well and 3 years is up and there it is. How does everyone vote on that, on whether they like it or don't like it? I mean you are not going to hand out a constitution to every Territorian, are you?

Mr HATTON: You probably would send a copy of the proposed constitution and some discussion documents, like they do with a referendum, the for and against arguments or whatever, to every voter.

Mr DAVIDSON: But surely the ...

Mr HATTON: I do not know. I have not thought through the mechanics of how you run the referendum, but I would imagine you would go to that extent and there would be a public

education program of exactly what it means, almost like a campaign. At that stage, we would be going all out to sell the constitution to the people.

Mr DAVIDSON: You have got both parties backing this constitution and there should not be really any need for the people of the Territory to vote against it if it has been formed by communities. How do they suppose a 'No, do not vote for this' when everyone said, 'Yes, this is it', because they formed it?

Mr HATTON: If we do our job really well, we will get to that situation, but there is no guarantee we are going to get to that situation.

Mr SETTER: I think that is being very idealistic from the point of view that the reality is that, at the end of the day, there would be some people who would disagree.

Mr HATTON: There would be vested interests groups out there that will oppose it. It may not be the 2 major political parties, but there could well be vested interest groups in the community who might be opposed to it, like last night.

Mr WORTHINGTON-AYRE: You have got to have all the proper basic ideals. You cannot do without them.

Mr HATTON: What we are saying to you is - I think just from our discussion now you can see this - that this process is going to go ahead and it is something that is going to affect all of our lives. And not just our lives, it will affect our children's lives and our grandchildren's lives and it is something that is really worth while thinking about, talking about, making sure you get involved in.

It is not frighteningly complicated. The questions can be brought down to simple specific issues that you can address, but you must start to think about those things, develop a viewpoint. Do you think there should be an Upper House? Do you think that the ministers should be appointed from amongst the elected members? Or would you like to see what they do in America where they can appoint somebody who is not an elected member as a minister and be responsible to the legislature? You have got that opportunity to think those things through, to create the society you want for yourself and for your children. Can we find a way that we can get Aboriginal and non-Aboriginal people working out a common path to the future where we can live together in mutual respect. That is part of it too.

Mr WORTHINGTON-AYRE: On that point, would the full-blood Aboriginals prefer to migrate while they have got the opportunity and make a permanent, small state of the Arnhem Land area for full-blood Aboriginals from all sources, certainly in the Top End, rather than increasing our tax ... (Inaudible) ... Wouldn't they rather be on their own?

Mr HATTON: Well, the people are here. Ask them.

Mr JOSHUA: Yes, ask me that. We did not make that rule and it is you people that made that rule.

Mr MUNUMA: Yes, that Arnhem Land. That is for blackfellas. The Territory is for everybody, black and white.

Mr WORTHINGTON-AYRE: Yes, but you cannot ignore the fact that - what is it now 170 000?

Mr JOSHUA: You asked the question.

Mr WORTHINGTON-AYRE: 140 000 white ...

Mr HATTON: You asked them a question, let them have a chance to answer it.

Mr WORTHINGTON-AYRE: Would you rather live on your own?

Mr JOSHUA: Yes, why don't you just leave Arnhem Land as it is.

Mr WORTHINGTON-AYRE: Would you go there and live?

Mr JOSHUA: I am there.

Mr HATTON: He lives at Numbulwar.

Mr JOSHUA: That is right. Numbulwar is in Arnhem Land. Out on the Gulf.

Mr HATTON: Can you accept the reality of this?

Mr WORTHINGTON-AYRE: I do not think - listen what is your name again?

Mr JOSHUA: Joshua. My name is Joshua.

Tom, you see Aboriginal people did not make that rule that you have got to have a permit to enter Arnhem Land. We didn't make that rule. You people made the rule.

Mr WORTHINGTON-AYRE: But that is a good rule for you. It keeps the white man away from you.

Mr JOSHUA: We didn't make that rule. You made that rule.

Mr WORTHINGTON-AYRE: But do you want that? Do you want to live on your own?

Mr JOSHUA: Just leave us in peace. ...(Inaudible)... That's all I got. I am independent. That is Arnhem Land there. That is why we are living there.

Mr WORTHINGTON-AYRE: And you are satisfied with that?

Mr JOSHUA: Yes.

Mr HATTON: But you have really got to come to grips with the fact that you are talking to a man and that is his home country.

Mr WORTHINGTON-AYRE: Well, he is satisfied.

Mr HATTON: Yes, he comes from Numbulwar. That is his home country. If you are talking to a Pitjantjatjara man, he does not want to go to Arnhem Land. And they do not want the Pitjantjatjara man going up there either.

Mr JOSHUA: (Inaudible).

Mr HATTON: They are full blood.

Mr WORTHINGTON-AYRE: (Inaudible).

Mr HATTON: Yes, but the reality is that Aboriginal people have got their own country in different parts of the Territory. That is their homeland country. The reality is that, in the Northern Territory today and in the future, there is going to be Aboriginal people and there is going to be white people and there is going to be yellow people and brown people.

Mr WORTHINGTON-AYRE: There are too many.

Mr JOSHUA: (Inaudible).

Mr HATTON: We are going to have to learn to live together.

Mr JOSHUA: Tom, one day this Arnhem Land, won't be Arnhem Land. In the the future time that is going to happen one day. It won't be Arnhem Land anymore.

(Indecipherable exchanges).

Mr HATTON: And I say to you, what do you want to do with the land?

(Indecipherable exchanges).

Mr JOSHUA: I am proud of what I am and that is it. We should live together as human beings.

Mr HATTON: Which one is your country?

Mr JOSHUA: It is not the colour, mate. You cut me and I cut you and the blood is still red blood.

Mr WORTHINGTON-AYRE: But the white people are committed to making their sacred sites a paying proposition for the white man.

Mr HATTON: Look the reality is that you are not going to gather up all the Aboriginal people and put them into some place and say, 'That is your state and you can do your own thing and we will all live over here'. That is not going to happen.

Mr WORTHINGTON-AYRE: But, in large measure ...

Mr HATTON: But, I don't think Aboriginal people want that either.

Mr JOSHUA: I believe we just live together as brothers. Why not? Largely, it is not the colour. Not my colour.

Mr HATTON: The more we talk to each other, the more chance we have got of getting of that.

Mr JOSHUA: The more you do things together, the more you will eventually get a balance.

(Indecipherable exchanges).

Mr JOSHUA: Your friends over there, my friends over there. You sit there but I sit here now ...

Mr WORTHINGTON-AYRE: It would be better for the Aboriginal to go their own way

Mr JOSHUA: We should live together as brothers.

Mr HATTON: But that is assuming they want to. I need to answer this question as it is important. I think a lot of Europeans think the Aboriginal people just want to go their own way. What I think Aboriginal people want is for us to stop pushing them and allow them to develop at their own pace, not to stop development. They do not want to live separately from everybody else.

Mr WORTHINGTON-AYRE: Australia has 16 million inhabitants now. The estimated maximum of the holding ground for the resources of Australia in another 200 years is a maximum of 116 million. We do not want 50% of those to be all foreigners.

Mr HATTON: On that argument, we are all foreigners. I would not take that line too long if I were you.

Mr WORTHINGTON-AYRE: Yes, I would hold firmly to that. That all foreigners must be restricted to 15%.

Mr HATTON: Well, what do you call a foreigner?

Mr WORTHINGTON-AYRE: Well, genetically ...

Mr HATTON: A non-Anglo-Saxon?

Mr WORTHINGTON-AYRE: The White Australia policy is the type. The English islanders, what are now called France, Germany, Holland, the Poles, the white Russians - they are all the one genetic ...

Mr HATTON: Caucasian.

Mr WORTHINGTON-AYRE: Yes, whatever it is. The general whole group are one genetic colour.

Mr HATTON: You are excluding Mediterraneans.

Mr WORTHINGTON-AYRE: If you go 1000 miles away, you go into the Chinese. If you go the other way, you have got the negroes.

Mr HATTON: I have got to say, and I will be very clear about it, I absolutely and totally disagree with every thought process you are involved in in that discussion. I think the colour and genetic background of people is an absolute irrelevance. It is past history and it will never be the future history of Australia while I have got a say in it.

Mr WORTHINGTON-AYRE: Well, I won't vote for it.

Mr HATTON: And that is fine. You do not have to. If that is how you think, then I would rather that you did not vote.

Mr WORTHINGTON-AYRE: I mean the White Australia Policy must be kept. All foreigners within 15% ...

Mr HATTON: Well, I am sorry. I do not agree with you.

Mr WORTHINGTON-AYRE: That is what I vote for. The party that sticks closest to the White Australia Policy is what I vote for.

Mr HATTON: Okay, well you will not vote for me then.

Mr WORTHINGTON-AYRE: You might change your mind.

Mr HATTON: No way.

(Indecipherable contribution by someone called Bill).

Mr HATTON: I do not agree with the White Australia Policy. I do not agree with it. We have got a Territory that has got - it is history, it is here, we are all here. Some Aboriginal people ask why the white people don't go. They are not going to go. And, similarly, the Asian people are here. We have got to learn to develop a society where we can all live together comfortably and make it a better place.

(Indecipherable comments).

Mr HATTON: Has anyone any other questions?

Ms FISHLOCK: Is it automatically assumed that it would be a Westminster type model that we would be looking at?

Mr HATTON: No, it does not so long as you maintain the basic monarchical system of parliament. I think most of us are of the view that we would probably prefer to keep the Westminster-style Cabinet government system. But, I do not believe there is a requirement under the Constitution. Graham?

Mr WORTHINGTON-AYRE: What is John Howard's idea on one Australia?

Mr HATTON: Graham, could you perhaps clarify this. The Constitution of Australia does not say that you must have a Westminster-type system of parliament, does it? Other than that you must have a monarchical system?

Mr NICHOLSON: I do not think so but I heard Professor Lumb say that he thinks it does. So there is even a difference in that but I don't think he is right. Really the only controlling factor is whether the Commonwealth ... (Inaudible).

Mr HATTON: Certainly the question was asked in here - for example, the external appointment of ministers.

Mr NICHOLSON: Professor Lumb is a fairly conservative person who is committed to the Westminster system. Well, there is no single Westminster system anyhow.

Mr SETTER: That is indeed correct.

Mr HATTON: Please understand that this has never been done before in Australia. It is probable that it will not happen again. We will probably be in and out of the High Court of Australia 10 or 20 times in the process, getting the judges and lawyers - lawyers will make a lot of money - to work out how to interpret those clauses in the federal constitution that have never been used before. What does it mean?

UNIDENTIFIED: We have to have an orderly balance of payments.

Mr HATTON: Well, we have got that. Well, we have. But, I am not going to get into a financial debate because that is nothing to do with statehood.

Mr DAVIDSON: Just looking at this page 15 here, what rights do the people of Australia have to say that they can ...

Mr HATTON: You will find there are 2. There is a separate booklet which you will find a bit more interesting than that one. It is called 'Options for the Grant of Statehood' and deals with that process. There are 2 alternative ways, it appears, that you can create a new state. One is by amending the Australian Constitution under section 128 - like the referendum that happened last year - to amend the Constitution to include the Northern Territory. And that requires a national referendum. There is another way, under section 121 of the Constitution, whereby the parliament of Australia can accept new states on such terms and conditions that it deems appropriate. And that is the recommended course of action that we take, but we are saying the terms and conditions are equality. So, that only requires a federal parliamentary decision to make us a state. To go the section 128 referendum way, they still have to make a decision and pass an act of parliament to put it as a referendum to the people. So, in one, you have to get the decision of the federal parliament and, in the other, you have to get the decision of the federal parliament and the people of Australia. Given the example of last year, you know why we are saying take 121.

Mr DAVIDSON: As far as getting our views over, is that on a local council level or only when you people come down?

Mr HATTON: We would be happy to take written submissions. We will be coming back again to take verbal submissions. We are looking for any avenues we can to get feedback even from an individual person who thinks that he has got a particular viewpoint he wants to bring forward. We really are trying to say to the community of the Northern Territory: think about it, talk about it, have your say.

Mr WORTHINGTON-AYRE: What are the main terms again that are required? Of the Commonwealth agreement.

Mr HATTON: It is an agreement by the federal parliament, of both Houses. They don't meet jointly, do they, on the subject? It is like a normal act of parliament. It has the effect of making us a state, a constitutional state.

Mr NICHOLSON: What we have suggested is that there should be agreement between the Territory government and the Commonwealth and that gets incorporated in ...

Mr HATTON: Yes, We want to have a say in what goes into that act of parliament. We want to agree to it.

UNIDENTIFIED (Bill): We told them about the Northern Land Council. I want all them people over there, the toilet facilities ...(Indecipherable).

Mr HATTON: When we finish this meeting, we will go and have a talk about your problems there. We will do that after this meeting. I am not going to talk about new houses at this meeting. I am not even a minister now. But we can hear what you have got to say and go and talk to the government. Used to be.

UNIDENTIFIED: ... with Terry Smith.

Mr HATTON: ALP. Wesley is a member of the ALP.

Mr WORTHINGTON-AYRE: What does Terry Smith think about the statehood matter?

Mr HATTON: It is joint. We are working bipartisan on this. This process has the support of both the Labor Party and the CLP. Everyone is in it.

Mr DAVIDSON: See, that is what I was saying before, Tom. Both parties are in on it together so it can only be a good thing.

Mr WORTHINGTON-AYRE: It can only be good, yes.

Mr HATTON: We also have some other publications. The best thing we could do is perhaps work through the community council here. You could also liaise with the other communities around here, if that is suitable. I would be interested in supplying some of these other background information, options papers, as they come out so that people can find out some of the other issues. There is one here on an important issue that I know everyone is interested in - land matters. That deals with land rights, national parks and all those sort of issues. There is one here specially on national parks and another one specially on mining, minerals and energy. And they are

just options papers and discussion papers. There is the one here on the ways to go about making a state. There is one here on this constitutional convention and different ways of doing that and this one here, of course, which says a lot more on things in there. If you have got something in here and would like to know more about that, you will find it in there. So one can lead you into the other.

We have had a fairly interesting discussion this morning. Perhaps we might call the formal meeting to a close unless somebody has anything he particularly wants to say. I formally declare this session closed.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

PINE CREEK — Friday 17 March 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Ms Gaye LAWRENCE
Ms Kelly CLARIDGE
Mr Kevin McGREGOR

Also present:

Ms Margaret McGREGOR

NOTE: This is a verbatim transcript that has been tape-checked.

Mr HATTON: Thank you for coming along on this wet Friday afternoon. Probably the rain has helped to cool things down and get a bit of greenery around the place, so it is not all bad.

I would like to introduce myself. I am Steve Hatton and I am the chairman of the Northern Territory Select Committee on Constitutional Development and Wesley Lanhupuy, the member for Arnhem, is a member of our committee. Our committee was formed back in early 1986. There have been a few changes in the membership of the committee since then and modifications to the terms of reference as we have been developing how we approach the issue of gradually moving the Northern Territory towards achieving our eventual objective of statehood. The committee is also unique in the Northern Territory and probably in Australia in that it is the only committee that has an equal representation of both opposition and government. There are 3 government and 3 ALP members on the committee. The deputy chairman of the committee is Brian Ede who is the Deputy Leader of the Opposition in the Assembly. The reason for that is that the work of this committee is not a party political issue. It is not something that our the 2 major parties are arguing about. Both are working towards the same objective and that is to try to develop a constitution for the Northern Territory, working towards that inevitable day when the Northern Territory will become a state.

We have been working, as I said, since early 1986 on the task. Our major job is to prepare a draft constitution for the Northern Territory. Please understand that we are not in any way asking anybody whether he or she supports us becoming a state now or not. We are not asking you that question or confronting you with that decision. We are asking you to accept the reality that one day the Northern Territory will become a state, whether it becomes a state next year or in 5 years or in 10 years or whatever. One day it will happen and we will become a state. But, before we can even start to think about that question, we have to go through the exercise of working out and developing a constitution for that new state. And it has got to be something that is going to come from the people of the Northern Territory. What sort of a society do we want the Northern Territory to be like in the future? How are we going to address as a community the issue of all of our citizens learning how to live and work together in mutual respect? How are we going to provide protection for people's rights and freedoms and what foremost structure of government should we have in the future? How do the courts fit in with the government and what will be the role of the Governor or Administrator?

Many questions will affect the day-to-day lives of every person who lives in the Northern Territory, not in a dramatic way but it will just become a general part of your life and it will be something that creates the environment for the sort of a place you want the Northern Territory to be. That becomes expressed in the basic people's law, the foundation stone of our society, which is our constitution. We need to work towards thinking about what we want for ourselves, for our children and our grandchildren in the future and how we think we should provide for that. When we have got that draft and when everybody in the Northern Territory says, 'Yes, that is what we want when we become a state', we can then start asking when we will become a state. Before that time, it is really a waste of time even asking the question.

Ms LAWRENCE: Do you have a draft already?

Mr HATTON: No, we do not. You have this book which we have circulated. It is a very basic book which is aimed at providing a first stage introduction to what is a constitution so that

people in the community who do not normally run across these sorts of things can sit back and say: 'Right, that is what a constitution is and that is what it does'.

There is also a more detailed publication that was brought out in 1987 and which will be made available through the community government office here. It is a book called 'A Discussion Paper on a Proposed New State Constitution for the Northern Territory'. That deals with a wide range of issues such as the structure of parliament, the courts, whether there should be special provisions for human rights, the position of Aboriginal people, issues of land rights and a multitude of other issues. That resulted from extensive research of all of the constitutions of Australia and, most importantly, the sort of provisions that have evolved into constitutions in emerging countries around the world and old and new constitutions around the world. We have brought those together into a discussion document. There are some of the arguments for and against different clauses. There are some suggestions and ideas are put forward in here that probably no member of our committee would support. However, we believe that we have an obligation to enable the community to be as informed as possible and to bring forward what they want. We want to put all options in front of the community so that people can say that they like this but they do not like that.

Ms LAWRENCE: It is a bit difficult to make public comment when you really do not know the area. I know basically what a constitution is. The Pine Creek Council has a constitution and its functions are set out. With a state, there is something on education - I do not really know what it entails.

Mr HATTON: Generally, those sorts of powers and activities are not dealt with in constitutions but in acts of parliament. Today's meeting is not to ask you what you think should go into this constitution. Today's meeting is to advise you of this process and to encourage you to take the opportunity to read and learn, ask questions and think about these subjects so that, maybe later this year, when you have had a chance for discussion and thinking and reading, you will be able to come forward and give us your ideas or support. We are not asking for submissions now because that would be unreasonable.

Mr LANHUPUY: What we are doing now is just to be sure that people are aware of the fact that there is a committee established to go around and to seek your views and to try and get your input into establishing what we want in the Territory in terms of lifestyle, what the laws should be like, what the parliament should include, whether we get people from outside the parliament, to ensure that your views are heard. It is a 3-stage process and this is the first stage. We are going around talking to people to ensure that we get your views. The second stage is what we will call a convention of a lot of people representing virtually the whole of the Territory. To an extent, they will say that this is what the law of the Territory should be and it will then be put to the people to take a vote on. The important fact is what we get from you is important in terms of ...

Ms LAWRENCE: Not now?

Mr HATTON: No, not now. Out of the research that we have done and that we are now trying to make available to people, out of the consultation that we will be going through over the course of this year and maybe early next year, and if we have to for longer than that, we will prepare a recommended draft constitution. We will also be preparing recommendations on how we should structure what is called a constitutional convention. That is like a giant drafting committee which will

sit down with all of the ideas that have come out of this, our research, the community input, and go through it and accept, reject, modify, adjust and come up with a proposed constitution which will then go to a referendum of the people of the Northern Territory. Thus, as Wesley said, it is a 3-stage process.

We are asking you to think about what you would have in a constitution. For example, do you think there should be an Upper House and a Lower House? Do you think the ministers should be picked only from existing politicians? In Australia, all the ministers are chosen from the elected members. In some countries, such as the United States, none the ministers is an elected member. I am not saying that we necessarily would go that way but they are options for us to think about.

Ms LAWRENCE: This is in an awareness part.

Mr HATTON: Yes, very much so.

Mr LANHUPUY: It is important for you to be able to have an input into the whole process.

Mr HATTON: And to encourage you as a community to meet and to talk about it. If necessary, we could get people to come down for community gatherings to help in discussions about it and to bounce ideas among yourselves. It is the sort of process you went through when you were looking at the community government constitution except that we have to do it for the whole Territory. We have to pick up all the people in the Northern Territory and bring together something that is going to work for everybody in the Northern Territory.

Ms LAWRENCE: Is it possible to have copies of those books?

Mr HATTON: Yes, in fact we will be making available all of these booklets. I do not think that we have any left at the moment, but we will forward a number of these to you next week. I believe that they will be held here in the office and be available for anyone in the community to borrow and read.

That is the discussion paper on the proposed constitution. There is also a discussion paper on representation in a Territory constitutional convention.

Ms LAWRENCE: Is that in simple terms or is it in jargon?

Mr HATTON: There is not too much jargon. We have tried to keep minimise the jargon. However, you have to balance between cutting jargon out and losing accuracy in what you are trying to say.

A third one is an interesting information paper on options for the grant of statehood, the ways of going about becoming a state.

Ms LAWRENCE: You must have some time factor in mind.

Mr HATTON: Yes, we sort of do. At the moment, under our terms of reference, we are expected to report to parliament by April next year.

Mr LANHUPUY: It is just a report to the parliament.

Mr HATTON: Yes.

Mr LANHUPUY: If the parliament says that we have not done enough, we will go back and keep talking. We as committee do not have a set time.

Ms LAWRENCE: No, but has the Territory government got a timetable?

Mr HATTON: No.

Ms LAWRENCE: You are just looking at it?

Mr HATTON: If we worked really hard and the community got involved and thought about it and brought their views forward and, later this year, we came around again and started to get good feedback and we then spent 3 months full time early next year collating it all together, we could walk into the parliament next April with a recommended draft constitution and recommendations on a constitutional convention.

Mr LANHUPUY: But we do not want to do that.

Mr HATTON: But then, if we were able to do that properly, it would probably require another year or 2 for the constitutional convention to go through the work that we have done. I am looking at a minimum of another 3 years for a constitution.

Ms LAWRENCE: So you either put it as a referendum ...

Mr HATTON: In the end, there has to be a referendum.

Ms LAWRENCE: It has to be a referendum, does it?

Mr HATTON: That is the position that has been adopted by the government, by the parliament. Our committee ...

Ms LAWRENCE: By Canberra or by you?

Mr HATTON: Ours.

Mr LANHUPUY: The Territory.

Ms LAWRENCE: Is it a referendum for the whole of Australia?

Mr HATTON: No, the Northern Territory.

Ms LAWRENCE: Only the Northern Territory?

Mr HATTON: That is to adopt the constitution. When we have worked all this through as a community, we will circulate it around the community and ask people to vote yes or no. If the people vote yes for it, we will say: 'When we become a state, that will become our constitution'.

The next question will be: 'When do you want to be a state?' That is the second question after we have done that job.

Mr LANHUPUY: But it will be up to the people of the Territory to be able to say yes or no.

Ms LAWRENCE: As you know, people do not like change very much. What people will want to know is how the change will affect them. Perhaps it will not affect them at all. It is very easy for people to say no.

Mr HATTON: Yes, I agree. People are very conservative on things as basically important as this and they are not going to accept any form of change unless they know what the change is, they know what they are going into and that they believe that they should go into it. And that is the 2 steps. Writing a constitution, forming the shape and structure of your future community, is part of understanding what you would be going into. You are defining what you are going into at that stage, aren't you? That is part of the understanding process.

Ms LAWRENCE: I get comments like, 'Oh God, if we became a state, it would be so expensive that we could not afford to live here'. They cannot say why they say that but that is an attitude that is adopted.

Mr HATTON: Yes, as we have been going around the Northern Territory, we always get asked the question at some stage about how much statehood will cost. And people are generally surprised when they find that already today they are paying the full costs of statehood. The Northern Territory government's taxes are the same as if we were a state. We have the parliament, we have the public service and the court system in place. All the infrastructure is in place. The funding that we get from the federal government is calculated out of the same tax-sharing pool. Our share of that is calculated by the same bodies that does it for the states - the Grants Commission - at the same time and using exactly the same formulas and factors to measure it. That has happened since 1 July 1988.

Ms LAWRENCE: One thing that comes to mind in the whole of the Northern Territory, I do not how many people there are ...

Mr HATTON: About 175 000.

Ms LAWRENCE: Some towns have that sort of population. We have the area but we do not have the population.

Mr HATTON: That is irrelevant. We have 50% more people than Western Australia had when it became a state and it did not have telecommunications and motor cars and aeroplanes to properly govern and administer that. I would ask everybody to think about this. Don't think that there will be any financial bonanza out of statehood either.

Ms LAWRENCE: No, I know that.

Mr HATTON: The benefits come from your right to determine your own life and make decisions for yourself in respect of your own life. It is the sort of change that occurs when you go

from being a child to being an adult. You stand on your own feet and you make your own decisions and you set your own future. You might make some mistakes on the way, but they are your mistakes, not somebody else's.

Ms LAWRENCE: In what way does the Territory not stand on its own feet at this time?

Mr HATTON: In a wide range of areas. 50% of the land mass in the Northern Territory is administratively outside the control of the Northern Territory.

Ms LAWRENCE: Crown land?

Mr HATTON: No, I am referring to land that is held under the Aboriginal Land Rights Act or is under claim under the Aboriginal Land Rights Act. That is not because it is Aboriginal land and not because of the Land Rights Act as such but because that act is a federal act. It contains a section that says that Northern Territory laws apply on Aboriginal land to the extent that they are not inconsistent with the Land Rights Act. That is such a vague statement that nobody is absolutely sure how much the whole fabric of laws in the Northern Territory applies on Aboriginal land. There have been court battles left, right and centre about that. In one case last year, a person was charged with reckless driving in an Aboriginal community in Arnhem Land. He defeated that charge on the grounds that he was driving on a private road. It was not a public road. It was in the middle of a town of over 600 people. We had to change our Traffic Act to say all roads on Aboriginal land are deemed public roads and we have that in 400 acts of parliament.

Ms LAWRENCE: Presumably, in your state, you would administer that Land Rights Act.

Mr HATTON: Yes, as all states administer all land.

Mr LANHUPUY: The idea we are trying to get across in relation to this constitution is the recognition that the government of the Territory should be able to make laws in the Northern Territory. At the moment, we are being governed to a certain extent by Canberra and sometimes that is a worry. My people out there say that they do not trust the Territory government but the fact is whether you can make decisions on your own grounds affecting the people that live in the Territory. That is the argument, I suppose, that we would like to hear from you. Instead of people making decisions for us in Canberra, can we do it here? That is the reason why we are going asking that sort of question throughout the Territory.

Ms LAWRENCE: Okay, that is one instance. What is another instance?

Mr HATTON: The management of our national parks is certainly another example where there is a clear difference. There are peculiar constitutional situations. Most of the protections in the Australian Constitution for citizens refer to people from the states and they cut us out because we are a territory. Do you know that, technically, the federal government has the power to acquire your property without compensation and without any reason if it wanted it?

Ms LAWRENCE: The federal government?

Mr HATTON: Yes, because we are a territory.

Ms LAWRENCE: What about the Territory government, can it do it?

Mr HATTON: No, we cannot. We can acquire it but we are required to pay compensation. The federal government is not.

Ms LAWRENCE: It can only do that in the Territory?

Mr HATTON: Yes, the Constitution stops it from being able to do that in a state but it can do it in the Territory.

Ms LAWRENCE: Has there been an instance?

Mr HATTON: Well, there have been instances of - and I do not want to get into a controversial debate about it.

Ms LAWRENCE: You say that it could do that but has it ever used that right?

Mr HATTON: It has certainly acquired substantial amounts of land without compensation from the Northern Territory government. Vacant crown land.

Mr LANHUPUY: What we have in the Territory is a just a Self-Government Act which can be abolished by an act of parliament, just like that. We are not a state as yet in the Territory. If you look at all the other states, they have got theirs and in terms of having some sort of impact in respect of the type of responsibilities we may have, that is what we are asking for.

Ms LAWRENCE: Yes, I understand that.

Mr HATTON: There have been instances. As I said, I do not want to get controversially embroiled in the pros and cons of the debate but the reality is that the federal government has compulsorily acquired Northern Territory government land without compensation and issued it under freehold title to private groups of people through the Land Rights Act. They could not do that in a state. State governments can do that because it is their land. In this case, the federal government has acquired the land off the Northern Territory government and then issued it to somebody else. The Constitution does not allow it to do that in a state. The states can do it. The states can issue land under the land rights.

Ms LAWRENCE: Where would unalienated crown land be if you were a state? Would that still belong to the federal government? Would it be administered by the Northern Territory state?

Mr HATTON: It is property of the people of the state held by the government of the state. It does not belong to the federal government.

Mr LANHUPUY: The services in terms of health, education etc are already there. The title itself is in federal legislation and, therefore, regardless of how you look at it, there may be some arguments in respect of how you manage that specific land. You would have to get into legal arguments about just where you stand. The argument here is that services are there in terms of education, health or whatever. Somehow or another, through this discussion and getting as much

information as we can from people throughout the Territory, can we say to the federal government that we would like to become a state? At the moment, we have a fair number of responsibilities of our own but we would like to be on our own to make decisions that affect us on a daily basis, regardless of whether they be land matters or whatever.

Ms LAWRENCE: Yes, I understand that. The Pine Creek Council does not have control of what happens to the land in this town and I think that is terrible. We can advise and we can comment on things but the council is only a community council. It is not a town council and to have those powers I suppose we would have to be a town council.

Mr HATTON: They are the sort of issues that the constitution probably will address. That is your chance to say as a community how do you want it to operate. One question that is asked is whether there should be constitutional recognition of local government and community government and, if so, whether there should be some division of powers. All of those sorts of questions can flow. That is part of working out how we want the Northern Territory to work. We as Territorians will decide that. Wesley made the point that the very existence of the Northern Territory depends on a federal act of parliament. The federal government has the power to wipe out the very existence of any form of government, including community government, in the Territory simply by repealing one act of parliament. Technically, by repealing one line in a regulation under the Self-Government Act, it could wipe out the entire Northern Territory education system because we do not have a constitutionally entrenched right to have a say over that because we are a territory. The Commonwealth has 6 months to disallow any act of parliament of the Northern Territory.

We are still very much the child of the federal government, being allowed a little bit of rope, but we have always got that leash that it can pull back if it wants to. Self-government has been so successful because, although you might not agree with all the decisions - and there have been many arguments about many decisions - at least you have a right to have a say about whether the people who are making those decisions can continue to make those decisions. You have got a right to vote. You do not have that same sort of vote - 1 seat out of 154 - in the federal parliament but 25 out of 25 seats in the Northern Territory. That forces the politicians to be responsive towards what the community is saying, all the different elements of the community. You help some and upset others and that is the way government goes. If we upset you too much, you throw us out and give somebody else a go. That is your right as a citizen. You do not get that right if you have not got your own government. That is how the people have a say in how government runs.

Mr LANHUPUY: For this reason, what we are doing is going out to you people, travelling around, so that you can give us the ideas how in the end we should have a constitution structured for and by the people, not by the politicians. We would like people's input into it and we want it structured the way the people in the Territory would like to see it framed.

Ms LAWRENCE: Yes, but if people are to be able to do that, they will have to study what they are putting into it.

Mr HATTON: It is going to take a lot of time and it is going to take a lot of talking and a lot of thinking by people. We do not pretend it is going to be a quick or easy job. What we are asking is that, as a community, let us start work on the job. We have done the basic homework to help. We can give you the information. We can have people come and talk to you so that you can come

to grips with this issue or that issue. Think about it and you will be able to indicate whether we should or should not have an Upper House. You will think that through and you will tell us those sorts of things and we will then be able to put the words down on a draft constitution that expresses those views. That is what we are trying to do. We do not want you to sit down and give us the nuts and bolts of the words but give us the views, the policy views if you like. Do you think the constitution should say there must be a fixed term of parliament or should that be left somewhere else?

Ms LAWRENCE: How many people are likely to be in Canberra representing the Territory state?

Mr HATTON: That is a separate question and we do not deal with that one here. That is when you sit down with the federal government and start asking those questions. If you want my personal view, I am happy to express it.

Ms LAWRENCE: Yes, just the likelihood.

Mr HATTON: He is advising me not to.

Ms LAWRENCE: Well, it is going to be more than one, isn't it?

Mr HATTON: That is in the House of Representatives. I think that depends very much on the size of the population.

Mr LANHUPUY: I do not think that there is any doubt that both the Labor party and the CLP support equal representation in the Senate. That should happen because this vast interest in the Territory should be represented in parliament. We have got an opportunity now after 100 years to be able to start something that has not happened. Tasmania was the last of the states to achieve statehood.

Ms LAWRENCE: How long ago was that?

Mr LANHUPUY: About 100 years. We are in the process of seeking our rights to have our voice in the development of the Territory.

Ms LAWRENCE: I guess it will follow as a matter of course. Self-government was the obvious step and that has been more than 10 years now.

Mr HATTON: Yes, coming up to 11 years.

Ms LAWRENCE: You could not have done it any quicker anyway.

Mr HATTON: Probably not. But now is the time to start looking towards that next step and now, as a community, we need to start asking what that next step is, how it will work, what it will mean, how much it will cost and how we will set up this new state.

Mr MCGREGOR: If they make it a state ... (Inaudible) ... what are they going to call the Northern Territory. That is vitally important.

Mr HATTON: I think the people of the Northern Territory will tell us that. If you ask me - and nearly every Territorian that I have spoken to agrees - why shouldn't we keep calling it the Northern Territory? You do not have to change its name.

Mr McGREGOR: That is right.

Mr HATTON: There is no law that says that you have to change its name. Does that sound reasonable? I think that, if we tried to change it, every kid in the Northern Territory would cut our throats to start with.

Mr McGREGOR: Another thing that struck me. It sounds very good what you said about this and that once we are a state. It is very good. But, what about the poor Aboriginals when you have got a man like Yunupingu. You know, he is a millionaire. He has got everything and his people have not. Now he might fight the government not to have a state and those people are going to suffer, aren't they?

Mr HATTON: Look statehood is not going to stop people fighting among themselves. They are not going to stop people arguing and we are still going to have political battles before statehood or after statehood. That is just a fact of life. What we at least will know is that those battles are going to be worked out between Territorians and solutions will not be imposed from outside the Northern Territory

Mr LANHUPUY: There is going to be a lot of people who might be against statehood and many who will be for it. I think it is a general feeling throughout the Territory that one of these days we will have statehood. There will be a lot of people saying that they do not want statehood and other people saying that they want statehood for their own interests. We have to listen to that and accept their views, write them down and make some sort of decision that, hopefully, will benefit the whole of the Territory instead of just one group. You have got women's rights, you have got Aboriginal rights, you have got a whole lot of people who will come to us and tell us what they want. They may say that they do not worry about blacks' rights or whites' rights or women's rights or gays' rights. But, we have to listen to them and, hopefully, we can come up with something that will make people happy.

Mr HATTON: Or stop them from being unhappy.

Mr LANHUPUY: We will try anyway.

Mr McGREGOR: Excuse me for asking, where do you come from? Arnhem land?

Mr LANHUPUY: Good country.

Mr McGREGOR: Yes, I thought so. What is your name?

Mr LANHUPUY: Wesley.

Mr McGREGOR: Oh, Lanhupuy, right.

Mr LANHUPUY: What we are trying to do is now to make sure that we get this paper out to as many people as we can. The community cannot recommend something to the parliament if we do not think it is right. If there are a lot of people out there who have concerns about certain aspects, we will tell them. But we cannot have a constitution if my mob say: 'We will not go along with you mob'. That is a big worry but we have to try and say: 'Look, let's try to work it in so that the whole lot of us can make a Territory a better place for us mob to live in'.

Mr MCGREGOR: But politicians never agree, do they?

Mr HATTON: You would be surprised. Sometimes we do.

Mr MCGREGOR: Ha! Ha! They never agree.

Mr HATTON: We are agreeing on this.

Mr LANHUPUY: Where is Rick Setter?

Mr HATTON: We are agreeing on this. As I said, we have done a lot of homework. Apart from those 3 committee booklets, there are other publications that are already available. One deals with land matters on statehood, another one is on national parks on statehood and another one is on minerals and energy on statehood. They are options papers, discussion papers. There are 2 more that are in the process of preparation. One is dealing with industrial relations under statehood. There is a consultancy report from Sir John Moore, the past president of the Arbitration Commission. That is publicly available. He has made some recommendations and comments are coming to the government on that. Another paper is being prepared now on the financial implications of statehood.

Ms LAWRENCE: The gold tax, does that ...

Mr HATTON: That is federal.

Ms LAWRENCE: And that would always be federal?

Mr HATTON: No matter whether we are a state or not.

Ms LAWRENCE: Okay.

Ms CLARIDGE: The royalties?

Ms LAWRENCE: We get royalties anyway.

Mr HATTON: The royalties situation on minerals in the Northern Territory is a mixed bag. Where it is on Northern Territory crown land or Northern Territory controlled land, the royalties are paid to the Northern Territory government. For example, Renison Goldmine pays royalties to the Northern Territory government.

Mr LANHUPUY: Whereas Ranger doesn't.

Mr HATTON: Under the Self-Government Act, the federal government retained ownership of uranium in the Northern Territory.

Ms LAWRENCE: Regardless of statehood?

Mr HATTON: On self-government. Thus, it gets the royalties on uranium.

Mr LANHUPUY: And a percentage goes to the Territory.

Mr HATTON: It pays some of it back. That is part of the money that it says it is generously giving us.

Ms LAWRENCE: Who addresses the monitoring at Ranger and all that, the Northern Territory mines department?

Mr HATTON: Yes, we have an Alligator Rivers Research Unit within the Mines Branch and our mines safety people are working there. The money that the federal government gives us out of the royalty payments, we spend on monitoring and research on the uranium industry. We get a nil net return.

Ms LAWRENCE: We made a comment that some of the royalties from Pine Creek goldfields should come here too.

Mr HATTON: They probably do, if you really had a look. You just got a new power station, didn't you?

Ms LAWRENCE: But you just want more.

Mr HATTON: You just got yourself a new power station. Funding comes into the community government, doesn't it?

M LAWRENCE: We want all the royalties coming to us.

Mr LANHUPUY: Responsibility in relation to the Alligators Rivers region is a federal responsibility. But, the Department of Mines and Energy does take responsibilities in conjunction with the operation out there because it has to coincide with the Territory legislation, but overall responsibility for the whole area virtually lies with the federal government and that is the sort of responsibility that statehood, this constitution, will bring back to us.

Mr HATTON: It is administratively more logical. All logic demands that mines in the Northern Territory should be managed and controlled, licences issued and all the rest of it, through state laws. The federal government does not even have a mining act, but it issues the licences. It issues the mining permits. It does not even have a law to do it with. It does not have the administration, mines safety control people or the inspectors. It does not have the computerised ...

Ms LAWRENCE: Yes, but you would be upset if it did and it had its own people out there.

Mr HATTON: The only reason it doesn't is that the only mines it has any influence over are in the Northern Territory. It does not have any influence over mines anywhere else in Australia.

Mr LANHUPUY: A classic example is Coronation Hill. Pine Creek and Jabiru would boom. The control of that sort of conservation is by the feds. That is the type of responsibility that I think the government in the Territory would like to have control over, whether it be conservation, mining or whatever.

Mr HATTON: If the federal government gives the go-ahead for Coronation Hill, it will be giving us permission to issue a mining permit under the Northern Territory Mining Act for a mining lease over that and then it will collect the royalties out of Coronation Hill because it is in Kakadu.

Ms CLARIDGE: That is not fair.

Mr HATTON: No, it is not. It is lunatic. But that is the consequence of this halfway house that we are in. We are neither fish nor fowl at the moment.

Ms LAWRENCE: The protection of the crocodile, does that come under a Territory act or is it federal?

Mr HATTON: It is Northern Territory act. The saltwater crocodile is listed under appendix 2 of the Convention on International Trade in Endangered Species. It was on appendix 1 which gave total protection. As a result of research and submissions and arguments that were presented by the Northern Territory government, it was moved from appendix 1 to appendix 2. It enabled us to capture them in the wild and put them in farms. We cannot kill them but, by putting them on farms, we have the crocodile farming process under way. We can remove them from dangerous areas and put them into farms and the progeny are then available for slaughter for their skins and their meat and etc. But all of that is done under Northern Territory law.

Ms LAWRENCE: But there may come a time when it will be removed altogether from that.

Mr HATTON: There will always be a management plan for crocodiles. It is the extent of that. If they became too numerous, an argument might be developed that there needs to be some form of culling but that is a separate scientific argument that you would have to present. You would not just go and do it.

Ms LAWRENCE: I just wondered whether you would have control over that.

Mr HATTON: It is basically done with the federal government because of the international treaty but they are working through us. We work in cooperation on those things.

Mr LANHUPUY: What you are saying is beyond what we are on about. It involves a lot of societies throughout the whole world in terms of the protection of wildlife generally.

Mr HATTON: We are not arguing about those things. There are a lot of things the federal government would continue to do anyway. All we are saying is that we should be equal with everyone else in Australia. You as an Australian should have the same rights as every other

Australian and have the same responsibilities. We should not lose our rights simply because we happen to live in this particular piece of dirt.

Mr LANHUPUY: It is not dirt. It is the Territory.

Mr HATTON: Country. Rock. Territory.

Mr LANHUPUY: What we are doing is going around to all the people, making sure that people are aware of the fact that this committee exists. Hopefully, that will create some sort of discussion among the communities throughout. Whatever you can do in terms of giving us any information or ringing us back or letting us know of verbal or written submissions, the committee would appreciate it. In the end, it is the Territory people who will decide on how they want that constitution framed. After these discussions, a constitution will be framed in terms of how the Territory people feel about it and then it will be put to a vote. Anything that can create some sort of discussion, we will certainly be interested in. I think the committee would be willing to come back here to discuss matters further with the people here.

Ms LAWRENCE: Maybe the next time you come, we will be more informed about what we are talking about now.

Mr HATTON: Very much. This round is to start people thinking about the subject and to say: 'Hey, look at all this information that is available to you'.

Ms LAWRENCE: Can we have those other documents?

Mr HATTON: They will all be available here through the council office.

Anybody else have any other questions? Thank you very much for coming. I hope that you can get out and talk to the community.

Ms LAWRENCE: As long as people are talking about it, then I think something will come of it.

Mr HATTON: That is the only way that we will get something to come of it.

SELECT COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC MEETING

NGUKURR — Wednesday 3 May 1989

PRESENT: —

Committee:

Mr S. Hatton (Chairman)
Mr B. Ede (Deputy Chairman)
Mr C. Firmin
Mr W. Lanhupuy
Mr D. Leo
Mr R. Setter

Officers assisting the committee:

Mr R. Gray (Executive Officer)
Mr G. Nicholson (Legal Adviser)

Appearing before the committee:

Mr David DANIELS

NOTE: This is a verbatim transcript that has been tape-checked.

ISSUED: 9 August 1989.

Mr DANIELS: We want to start now. Most of the leaders here are hearing this message about Northern Territory statehood. We heard that before but this particular group is actually working on this constitution. They are talking to people about the Northern Territory becoming a state. They are going around explaining it to people. They don't want to go forcing the issue on anybody. They just want to talk about the issue that you got in front of you in the paper. After they have talked, if you want to ask any questions, feel free to do that and they will explain as much as you want. Thank you.

Mr HATTON: Thank you very much, David. My name is Steve Hatton and I am the chairman of this committee of the Northern Territory parliament. It is called the Select Committee on Constitutional Development. At the back of this book, you will see that our committee has 6 members. There are 3 from the government side, the CLP, and 3 from the opposition side, the Labor Party, including your own local member, Wes Lanhupuy. This committee is different from most of the things that you hear about with government and politics. This time, the government and the Labor Party are both working together. It is not a thing that we are fighting about. We are both working together to try to get this job done. That is why there is the same number of Labor Party people as CLP people on this committee. It is what we call a bipartisan approach. There is no argument about what we are trying to do. It is not just the government, everybody in the parliament is working on this job.

Our job is to work with the community to write a special law. It is a law called a constitution. When you are moving towards community government, for example, you want to work out how you are going to get community government going. You have to work out how you are going to elect a council, what the boundaries are, what the council can do, what the council cannot do and all the rules that you need to set up a council for community government. You write those rules in a thing called a constitution. I know that your community has been working to get together such a program. It is the same sort of thing for the whole of the Northern Territory. Everywhere, all around the world governments have constitutions. All around Australia, every state government has a constitution which says what the government can do and what it cannot do.

If there is no constitution, a government can do what it likes. It has as much power as it wants to take. So that the government cannot just do what it likes, we can put a limit to stop it from doing the things that we do not think it should be allowed to do. The people make the law, called the people's law, that says that the government cannot touch this and it cannot do that. That law goes in the constitution. All the states - Queensland, Western Australia, South Australia, New South Wales, Victoria and Tasmania - have a constitution which sits over the top of the government. In Canberra, the federal government has a constitution which sits over the top of it, like its boss, and it says what the government can do and what it is not allowed to touch, what it has to keep away from.

The only place in Australia that does not have one of these constitutions is the Northern Territory. Because we do not have a constitution and because we are not a state, the federal government can do what it likes in the Northern Territory. We do not have protection because we do not have our own law made by the people. It can do what it likes in the Northern Territory, and it does. What we are saying is that it is about time the people of the Northern Territory said where they want this Northern Territory to go in the future. How do we want it to work? How are we going to set up the government and the parliament? How are we doing to go about making the

laws? How are we going to prevent the government from doing things such as taking away rights that are really important to us and that we do not want it to be able to muck around with? For example, that might be the right to vote. It might be the right to practise your own religion. It could be all sorts of things that are really important. If you want to say that something is so important that the government cannot touch it, you do that by making this law. This law is the people's law. It is the law made by the people. The government cannot go outside that law and it cannot change it. It is different from other laws.

The only way that this law can be changed is if the people say that they want to change it, not the government. You might remember that, last year, there was a referendum and you had to vote. You were asked to vote yes or no on 4 different questions. The federal government in Canberra wanted to change the Australian Constitution. But, it was not allowed to do it by itself; it had to ask the people. The people said no to all 4 questions and therefore the government could not touch it. This law becomes stronger than the government and stands over the top of the government. That is the way the people set the rules and make the laws. It is not like many of our white man's laws which are always changing back and forth. You have different a government and it changes the laws one way. Then, the government changes again and it goes back again the other way. It keeps changing backwards and forwards, and people become a bit confused on where the law is going. However, the law in a constitution stays the same. In a lot of ways, it is like Aboriginal law which stays the same all the time and keeps going down the one road.

You know that we have had a lot of arguments and fighting in the Northern Territory over different things. And the Northern Territory government has been fighting with the Canberra government. There have been arguments about land rights, sacred sites and all sorts of different things in the Northern Territory. As the people who live here, what we have to do is work out how we are going to live together and how we can make the Northern Territory a good place for our children and our grandchildren. We have to start writing those rules, those laws, that say how we are going to live together as equals and how we are going to live together with respect for each other, and make a good place for our children and our grandchildren. We want a place where Aboriginal people, white people and Chinese people can live together without fighting all of the time and where they can learn to understand and respect each other's viewpoint.

You can start making those sort of laws, those sort of rules, in a constitution. However, it will not be easy because there are an awful lot of people who do not understand one side or the other and who will argue all the time. But, if we genuinely think that it is important to do something for the future, and not just worry about today's fight, we have a responsibility to do this job. Are we going to leave a good place where my children, your children and their children will be able to live together happily? We have a responsibility to sit down and start thinking about how we want this place to work. For the first time ever in the Northern Territory, the people have to write the rules. The people have to sit down and talk to each other and start working out how they want to live together. And then, the people will tell the government how it has to go and not have the government tell them all the time.

Our committee's job is to help you to do that job. Our committee will help you to start to think about writing that law, to start thinking how you want the parliament to be, how you want the elections to go, how you want the courts to work and to determine what sort of rights are really important and should be protected from a government being able to muck around with them. What

things are really important? You write down all those rules and we all talk them through and come up with something that everyone is happy with. Then, you say: 'Now, we are going to start going that way together'. That is what we have to work at.

How is our committee going to go about this job? The first thing is what we are doing now: we are coming around saying that this job has to start. I do not expect you to tell me at the moment what you want. What I am saying is that I want all of you to start thinking about this and to read the material that we leave behind. Start thinking about the different things. Talk to each other about it and get your ideas together as a community. We will come back later this year or early next year after you have had a good chance to think about it, talk about it and develop your ideas. Then, you can tell us what you think should go in this law, this constitution. We are going around all the Northern Territory doing this. We have been travelling around now for a month and we have another 2 or 3 weeks to go. We are going to 60 different communities, saying the same thing.

We are asking the people to start thinking about this. They will all come up with different ideas. Many people in Darwin will have different ideas from the people at Lajamanu and the people at Ngukurr will have different ideas perhaps from the people at Nhulunbuy. However, you all have to express your ideas and have your say in this law. You have to talk about it. We will get your ideas and the ideas of people from all over the Territory. We will put those together and sit down and write out what we think the people are saying that they want in that law. However, you cannot trust us to do this job. You cannot trust the politicians on this one; it has to be done by the people. What we want to do first is to find out what you have to say.

The second job that we have to do is to work out how we can form a big committee of people from all over the Northern Territory. That committee is called a constitutional convention. It is a meeting of people from all over the Northern Territory who can speak on behalf of their communities. They will meet and look at what this committee has done. They can agree with what we have come up with or they can change it. Their job will be to work out what the people are really saying. When they have finished their job, and that could take a long time, it will be put to the people to vote yes or no. If you think that it is good and it is what you want, you will vote yes. If you think that it is not quite right, you will vote no. If the people say no, we will have to go back and start working again. We will have to keep working and working until we come up with something for which the people will vote yes. In the end, the people will say: 'Yes, that is the law that we want. That is the way that we want the Northern Territory to go in the future. That is the sort of place we want to leave for our children'. It has to be for Aboriginal people and for the non-Aboriginal people. This law is not just for one or the other; it is for everyone. And you cannot think only of yourself. You must think what is important for your people and your community, but you also must think about the other person too and work out how we might be able to work together in the future and not be fighting all the time. That is a good thing to leave for your children.

That is the sort of law that you have to write for the future of the Northern Territory. After you have made that law, it will become the boss over the top of the government. The government will have to work within that law and it cannot muck about with the rights that the people have in that law. Only the people can change that law. It is very important that we get this one right, that we do this one properly. To do it properly, everybody must think about it and have their say in it. It is not the sort of thing that you do and then say: 'Right, that is done. I will walk away now'. It will be

there in 100 years time and it will affect your children's lives and your grandchildren's lives. Therefore, you must make sure that it is the right law.

It is a great opportunity to do something good, and it is a big responsibility for us. Do you want your grandchildren to look back and say: 'Those people had a chance to make this a good place and to fix it up for us. However, they would not do that job. They were too lazy. They were bad'? Do you want your grandchildren to say that about you or would you like them to say: 'Those people worked and found a way to make this Northern Territory work well. They left a good place where we can grow and develop'? That is the job that you have to do, not only for yourselves but for your grandchildren and their grandchildren in 100 years time. It is for them that you must become involved and do this job. You have to work for them.

It will not be easy and I bet there will be many arguments about what should be in there. Nevertheless, it is a job that we have got to do. If we do not do it, we will not find a way to overcome all the fighting that keeps occurring in the Northern Territory. The Territory people have got to do that job. You cannot expect the government in Canberra to do it and you cannot expect the government in Darwin to do it. You have to do it. It is your Territory, your home, and you must make this main law. You must tell the government which way it has to go. You do that through the constitution. You tell the government - no matter whether it a CLP government or an ALP government - that there are certain rights that it cannot touch, that there are things that are so important that it cannot muck around with them. You say that as the people. You must talk to other people in the Northern Territory, tell them what you think and let them tell you what they think. Together, we can all work out where we have to go, how we are going to live together and make this place strong for everyone.

I am not going to do all of the work for you. I am here to help you and the committee is here to help you. We are here to explain and to give you information. For example, this book has some ideas in it and some of the different things that you need to consider in relation to a constitution. If you want to know more about it, there is a lot more that you can learn. Our committee has done a fair bit of work. We have produced this big book that is called 'A Discussion Paper for a Proposed Constitution for the Northern Territory'. We have put about 3 years work into that. We looked at constitutions all over the world and got all sorts of different ideas on what should go into it. We have put things in there that we think are good and also things that we do not like. There are things in there that you will like and other things that you will not like. You might think of some things that you think we should do and which we have not even thought about. That is why it is important for you to have a look at this, form your ideas and tell us about them. Talk about what you think should go into that constitutional law. We will leave these books here for you to look at and talk about as a community.

I do not want to talk for too much longer. I just want to say that I know that it will not be an easy job. You might feel that it is all too hard and that you cannot think about it. However, if you look at that book, you will find many little questions that you can talk about and think about. You have to do that in relation to other things in life. Just talk about those little things, one at a time, and build up a total picture of what you want. If you are not sure about something and you want someone to come and explain a bit more to you, give us a ring. There is a telephone number in there. Or you can write to us. We will get someone to come out to talk to you and explain whatever you want explained so that you can understand what this is all about. Then, when you

understand what it is about, you can decide whether you want to go this way or that way. That is how you get your ideas together and, when we come back at the end of the year or next year, you can tell us.

We have to do this job and this is your chance to have a say. If you do not take this chance, it is no good coming back in 4 or 5 years time and saying that you were not asked. We are asking you now to start thinking about it. As we build, you will build with us and be part of this so that we can look after what is important for you in making this law. Do not look for somebody else to do it because he might not put in there the things that are really important to you. As I said, you will not be doing this only for yourselves but for your children and grandchildren. It is an important job that must be done. It is in your interests and in the interests of your community that you should have your say in what we are doing. Do not miss the chance to help in this job of building a good place for ourselves and our children.

This gentleman over here is Colin Firmin. He is the member for Ludmilla and is also on our committee too. I have said really what I particularly wanted to say. Is there anybody who would like to ask any questions about anything at all?

Mr DANIELS: (Indecipherable) ... made a decision. It is a start. Start of something that the government, Aboriginal people, everybody are thinking about, more rights. Making a law suitable to us, suitable to the white people, suitable to anybody. It has got to be a law that suits everybody. (Indecipherable) ... government make a decision. This is a start. It might take a couple of years. It will take a couple of years because we want to make a law that this man will know, a law that will be suitable for our grandchildren. What ever we make will be very important. If we make a law, if we agree on this thing that we have been talking about. That law got to be like the Aboriginal law, a law that stays, not a law that changes every 5 minutes. We want a law that will stay a long time for Aboriginal people. Our law has never been changed for 40 000 years. It is the same law.

The other people of government, no matter whether they are CLP or Labor, are here today together. They are not fighting each other over this thing. They want to talk to everybody in the Northern Territory, everybody. They are going to community councils and want to talk to anybody and everybody. And everybody must get the message that, once we have made that law, it is a law that comes from the people. We have got the right to make the laws of this country and this is the opportunity that the government is giving to us today. We have got to have the rights that we have been asking about all the time. Land rights and rights to our place. This is the most important thing: the the right to make your own laws in your country where you are living. That law got to be suitable for you.

Now I can use an example. Lots of white people don't agree with Aboriginal law. This is the kind of thing. We can make a law in the Northern Territory that is suitable for us and how we should be dealt with by the white man law. Because that is the sort of thing. It is very important. But, today is not the day to decide. Today is the beginning of a new thing. People will be talking to us. We will be thinking. We will be talking. But, this paper is saying that we have got to talk. We do not make that law if we do not talk. They are not asking only you and me; they are asking everybody. Everybody has got to make that law. Yirrkala people got a different idea, Darwin

people got a different idea, Katherine people got a different idea. But, all the people have got to talk about it. Think about it, talk about it. There is plenty of time yet.

This is the beginning. If they do make that law in a few years time, you cannot turn around and say: 'Nobody told me'. This is a start. They give you that opportunity to talk to them, to talk to each other and talk to anybody so that, when that law is made, it is a good one. It has not only got to be good for the blackfellow, it has got to be a good one for everybody. We all got to live here - black, white, Malaysian, Chinese, whatever we are. We have all got to live in this Northern Territory, all kind of races. We are all mixed up here in the Northern Territory. Every kind - Italian, English, Chinese, Malaysian - are living all over the Northern Territory somewhere. So this lot will be talking to the whole lot, all the tribes, all kinds of people.

When we make that law, that law will be for the whole lot. We share that law. That law protects every one of us, not just one kind. Like today in the Northern Territory I reckon too many laws protect the white man's side. And many Aboriginal councils I know in the past - Mr Everingham introduced a council presidents meeting in Darwin every year. We used to go and talk about things and what is good for all of us. And Aboriginal people, old people, traditional people, use to start talking. None of them liked this white man's law. They never listened to those requests from our old people. Many of them have died now. They were telling this white man government that the law was not suitable and why not make a law that is a good one for the whole lot, you and me. This is the thing now. This is the one they are talking about. But, let's not get confused today. We will have an opportunity for everybody, especially from the governments, to talk about this issue, think about it, and build a good law. It will be bigger than the ones of the government. That law got to be made by everybody.

Does anybody want to ask any questions? You can ask them now. If you do not want to ask them, never mind. But, if you want to ask any questions, please feel free to ask them because this mob are experts on the thing. They are working on the thing. Everybody is involved. There is black and white involved with this committee, everybody in together. I suggest that there should be more blackfellows involved because there are a lot of blackfellows in the Northern Territory and there will be a lot of blackfellows when this thing comes into being. There should be a couple more blackfellows inside, on the committee, talking to everybody about it so that they get more feedback from our people. But, that is the sort of thing that we can raise with the committee as we go along. They are leaving telephone numbers and everything in the books. If there are any queries or you want to find out more, any particular fellow here today or lady, they can help you now or later on or anytime. I think you should feel free to ask them any questions.

Mr HATTON: I just want to say one thing about statehood. Now, in all that I said, I did not talk about a statehood, did I? I am not asking you whether we should become a state or not become a state because it is too early to ask that question. If I asked you whether you wanted to become a state, you would ask me what it would be like and how it would work. We do not know because we do not have that constitution. You cannot even talk about becoming a state until you have done that job. You want to know where you want to go. We are not talking about statehood now. When this job is finished, and that might be 3 years or 5 years, maybe then we will ask whether we want to become a state. We are not asking you now whether you think we should be a state now or later. However, I do ask you to recognise now that, whether it is in 5 years time or in

20 years time, one day in the future the Northern Territory will be a state. Nevertheless, you cannot even think about that until you have done this job.

That is why it is so important to take the time to do this job properly now. We have the time. It is a long road, but today we are taking the first step by asking people to start thinking about it. However, it is a job that has to be done in order to provide for the future. If we are quick, I reckon it will take 3 or 5 years to get this job done. That is if we are quick and I do not think that necessarily it will be quick. Thus, we have a long way in front of us yet and it will take a lot of talking to get this right. I was asked about a timetable for statehood. We need to do this job first and, after that, we can then talk about a timetable for statehood. Okay?.

Mr DANIELS: Do any of you people want to ask any questions? This meeting is for all of us. It is not a blackfellow meeting; it is for everybody. I know that it is little too soon to ask questions at this stage because we were informed yesterday and this is sort of the first meeting. People may not be ready to ask questions yet. If you do not want to ask questions, maybe we can finish up and then you can think about it. Like I said, there are phone numbers in the book. Ring any one of these people and they will be pleased to talk to you about the issues, about what everybody is talking about now.

Mr HATTON: Thank you, David. I think we will call it quits now. Thank you very much for coming along. Please, I ask you to take the time to think about it and talk about it and, if you would like us to come back at any time to talk about anything, let us know and we will come back. Talk to your local member, Wes Lanhupuy, when he comes in. Ask him questions about it because he is part of this too. Start talking among yourselves about the sort of things that you want so that, later on, at the end of this year maybe, you will be able to tell us what you think. We want to know what you want. It really is important for everybody to have his or her say in this job. Thank you very much.

Mr DANIELS: Thank you.

SESSIONAL COMMITTEE ON CONSTITUTIONAL DEVELOPMENT

PUBLIC HEARING

KATHERINE— Wednesday 19 July 1995

PRESENT: —

Committee:

Mrs M. Hickey (Deputy Chairman)

Mr T. Baldwin

Mr P. Mitchell

Mr W. Lanhupuy

Officers assisting the committee:

Mr R. Gray (Executive Officer)

Mr G. Nicholson (Legal Adviser)

Appearing before the Committee:

Ms Sandra Rew

Mr Jim Forscutt

Ms Dawn Cholsh

Mr Mick Peirce

Ms Joanne Lee

Ms June Tapp

NOTE: This is an edited transcript.

Issued: 4 August 1995

Final Edited Version

Mrs HICKEY: Good afternoon. I am glad to see some people from Katherine attending this meeting. I am Maggie Hickey. As the Deputy Chair of the Sessional Committee on Constitutional Development, I am chairing this session in the absence of our Chair, Steve Hatton. On my right are: Tim Baldwin, member for Victoria River; Phil Mitchell, member for Millner; and Wesley Lanhupuy, member for Arnhem. This is a bipartisan committee with 3 members from the Labor Party and 3 members from the Country Liberal Party. The 2 members who are not here today are: John Bailey, the Labor member for Wanguri, and Steve Hatton. We have tripped around from Alice Springs up to here and we will be holding a public hearing in Darwin as well.

This committee started as a select committee in 1986 and has operated under various guises since that time. Its terms of reference are basically to prepare the groundwork for a constitution for the Northern Territory, to investigate issues preceding the grant of statehood, and to make recommendations to the Northern Territory government. In fact, this is about preparing ourselves to become the seventh state of Australia. During those years, a great deal of research has been done. The committee has produced a number of papers, which you can see over there, as well as holding many public hearings, both in municipal centres and remote communities.

Whilst that work will continue, at this juncture we have prepared an exposure draft. This, if you like, is a draft for a new constitution for the Northern Territory. This is the document that we are seeking to particularly interest people in. Really, it is a precursor to the committee taking a draft constitution to the Northern Territory parliament with recommendations as to how we should now proceed.

We have set ourselves a timetable, according to which a constitutional convention would be formed in 1996. That convention will be comprised mainly of elected Territorians. At the moment, we intend to recommend to the parliament that there be a mixture of elected and nominated representatives on that constitutional convention. We are saying that 75% should be elected, about 50 people, from 10 electorates. We are looking at multi-member electorates. The remaining 25% will be from people who represent particular interest groups. We have suggested that such groups might include land councils, Aboriginal organisations and town councils, but that is still up in the air. We seek and welcome suggestions from members of the public so that, when the convention is formed, it will be as broadly representative as possible.

We will give to the convention all of the papers that have been prepared by the committee over the years. However, it is really up to that convention to determine what it does. If it wanted to, it could throw out this document altogether and start again. But we think that this will probably be a framework for consideration by the convention.

The exposure draft that we have at the moment contains several parts. The committee was specifically charged to undertake consideration of the legislative powers, the executive powers and the judicial powers that we want to see incorporated into a constitution for the Northern Territory. The document contains suggestions and drafts for those areas. We have also included some rather contentious issues such as land rights and recognition of customary Aboriginal law, as starting points for people to decide whether and how such matters should be covered in the document. A bill of rights is something else to be considered, as is local government. I know that there are people here today who are particularly interested in that aspect. We have prepared a discussion paper, Discussion Paper No 9, on Constitutional Recognition of Local Government. Although it has not yet

been written up in the exposure draft, it will certainly be considered in this document once it is completed.

We have also looked at the way in which we would entrench a constitution. For example, will we have a constitution that can only be changed by referendum? We have also looked at whether we would also incorporate some items in the constitution under organic law. That is something that is new to Australia. It happens in PNG and people might be aware of that. An organic law can only be changed by a special majority of parliament, not just 50% plus one. It can only be changed by a significant majority, which would include government and opposition members under most circumstances. That would be a special strengthening of laws.

We are considering issues such as Aboriginal land rights to be addressed by organic laws because, clearly, if we want a constitution that the vast majority of Territorians are happy with, there has to be that consideration of issues that are of importance to the 25% of our population which is Aboriginal. There is no doubt that Aboriginal people are not going to accept a constitution that does not give due recognition and proper protection to the interests that they hold.

Obviously, we would expect that statehood would bring all of the powers that other states have. That would include patriation of the Land Rights Act. That is not to say, however, that some aspects may not be changed in discussion and agreement as a constitution is formulated. There are some issues within this exposure draft that may be of interest to people in that regard.

The document contains explanations and footnotes. Items that correspond to clauses in a normal law are accompanied by explanatory notes which state the intent of the clause in plain English. The notes also make reference to any discussion papers that might have led to the inclusion of that particular clause.

The committee has worked very hard to reach agreement on as much as it can. It is a bipartisan committee. We are all committed to supporting a constitutional paper ready for constitutional development and we are all committed to taking that to the federal parliament with a bid for statehood. There is no doubt about that. We are all firmly committed to that. Of course, there are differences within that context. Some of them are philosophical differences and some of them are political differences.

In some cases, you will see in this paper that several options are offered. For example, we currently have 25 single-member electorates. Some people feel that a different sort of system might be appropriate for the Northern Territory, such as the Hare-Clarke multi-member electorate system that operates in Tasmania. Three options for electorate systems are flagged in the document.

Of course, when the constitutional convention is formed, it is free to do whatever it wishes with that. It can change it if it wishes, it can make other suggestions or develop new options. The sky is the limit, I suppose. You can do whatever you like with it once it gets to the convention. We have just put in all of the issues we feel are pertinent, that have been brought to us in discussions, negotiations and submissions.

Things like citizen-initiated referenda are of interest to many people. There is a discussion paper on that. All of that documentation and research has been undertaken by the hard-working

people on my left, together with our constitutional lawyer Graham Nicholson. All of that work is encompassed in these papers.

If people bring up other issues between now and December, we will certainly be looking closely at them. By December, we hope to have a form of a document that can be presented to Parliament. We will then work very hard over the Christmas break to prepare the final document. However, up until that time, we would welcome submissions from the public. In fact, we desperately need and want them.

I should also say that, in formulation of the convention, we believe that 75% of its members should be elected. I think it is very important at this stage for people in the Northern Territory to think about whether they, somebody that they know, or a particular representative group, should be involved in that constitutional convention. We hope that this will belong to the people of the Northern Territory. It is an opportunity that very few people will ever have in their lifetime.

This is probably a once-only event for us in the Territory to be part of making history, to be part of saying how we want our state to be governed, what sort of laws we want to operate under, what type of government we want to have, and what powers we want our government and our judiciary to have. It is an opportunity for people to get involved. Of course, if you do not get involved, you will end up with something that other people have formulated. I believe that a very important part of our role at the moment is to engender interest among Territorians and encourage people to become involved and informed.

Now I am only the ring-in chairman on this occasion, so I would just like to ask my colleagues if they have other things to add before throwing the floor open.

Mr BALDWIN: Perhaps I might just mention that, as part of our program for educating and involving the public, we have developed a display that has been going around with the show circuit. We have people staffing the display, which has been very successful at the Alice Springs and Tennant Creek shows. It is here again in Katherine and it will be moving on to Darwin. Its main theme and thrust is to try and engender some interest in this whole process. It is time now that Territorians became involved as individuals, as groups, as local councils and what have you. I would urge everybody to take the opportunity to have a look at this show stand, to pick up some of the material that is available, and to read it and have some input by way of written or verbal submissions.

Mr MITCHELL: I just want to stress that this whole thing is a bipartisan effort. The whole document is set up specifically as a framework, I suppose. I just want to stress that, if people are thinking that they do not like it or whatever, they have plenty of time to discuss it. Even if there are some questions you might think of after today, don't be shy about coming back in a couple of weeks time to throw questions to the committee. We will try to address them. I think that covers what I want to say.

Mrs HICKEY: Another thing I might mention are some questions that have been put to the committee as it has gone about its work over the years. I know that some of the people who have been working on the show stand have been asked similar questions, such as: 'Why should we

become a state? What difference will it make? Will it cost us more or less?' Our view is that it will not make any difference in terms of cost and the way we obtain our finances.

It will make a difference to some of the things that we do not have now. In a way we are in the hands of the federal government, whatever its political persuasion. We exist because of the federal government but, more or less with a shrug of the head, they can obliterate us. We are not equal with people in other states. We do not have equality and that is really what we are after. We are after equality with all of the other states so that we can run our own affairs knowing that we are able to do so without any thought that the federal government can make changes to us without our desire. That is an important aspect.

Other important issues include the repatriation of land rights and what we do with our national parks. Of course, the federal government looks after some of those at the moment, such as Kakadu. We would see those coming back in under our ordinance. Industrial relations is another one, although we would probably continue to use the federal industrial relations mechanism. However, industrial relations would then come back to us as Territorians.

I know that Jim Forscutt at least has some questions so I will throw the floor open now.

Mr MITCHELL: Just before we continue, could I ask that people identify themselves when they address us, for the Hansard record.

Ms REW: How does the committee fit into the convention?

Mrs HICKEY: I can explain that by saying that we currently envisage, and intend to recommend to parliament, that the six members of the Sessional Committee on Constitutional Development, plus the Chief Minister and the Leader of the Opposition, should be members of the constitutional convention. In other words, they should be some of the appointed members of the convention together with those other people I mentioned before, who might be nominated to the convention by particular organisations.

Ms REW: Are their votes equal?

Mrs HICKEY: Yes, I believe that they will be. Of course, this is only a recommendation. However, I would imagine that all members of the convention would have equal votes. At the moment, as things stand, the Chief Minister and the Leader of the Opposition are able to sit in on this committee's deliberations. They do not have voting rights, however. Only the six committee members have voting rights at the moment. Once they became part of the convention, I would imagine that they would have voting rights.

Mr MITCHELL: Under the recommendation, there would be 16 or 17 nominated positions apart from the committee, the Chief Minister and the Leader of the Opposition. Those could include people from the aged and the youth sectors of the population and others such as Aboriginal organisations, local government and ethnic groups.

Mrs HICKEY: Those are our suggestions anyway. We may not have covered the field. There may be other interested groups, such as the disabled. They may decide that that is a particularly strong lobby group that they would like to see represented on a constitutional

convention. Women may decide that they would like representation as a group. The field is open at the moment. As Tim rightly said, the show stand is excellent. We are hoping that it will continue to engender interest leading to more submissions from people.

Mr FORSCUTT: I am here as an individual rather than representing the local government of Katherine. I have some questions and concerns in relation to your Discussion Paper No 9 on the Constitutional Recognition of Local Government. I am wondering if I could take this opportunity to pose these questions to you.

Mrs HICKEY: Certainly.

Mr FORSCUTT: Thank you for the opportunity. Madam Chairman, if I could just say so, this is a new piece of draft legislation which has not been out for very long. The opportunity for us to have a good look at it and make comments later on is much appreciated.

I would refer you firstly to page 5 of my copy of the paper. It relates to interpretation. It says: 'It is theoretically open to particular Aboriginal communities in the Territory to seek greater local control through the formation of a local government municipality under the Local Government Act. So far this has not occurred. It is doubtful that this existing form of local government in the Northern Territory is an appropriate structure to implement Aboriginal self-determination'. I do not believe that that is a true statement. In fact, I think it is quite the opposite.

My other role as president of local government, as you can appreciate, has enabled me to see, particularly in the last 3 years, the local government structures that have been put into place to service and assist Aboriginal communities. The change in overall living standards in those communities and their participation in self-determination has just left me for dead. It has exceeded all our expectations. I see it more and more every time I move around the Territory, particularly among the Aboriginal communities. I am talking about those because that is what that particular section actually relates to. I am saying that that form of local government is really beneficial and that it is a self-determining structure. I would suggest that the committee look very strongly at that.

I have a copy of 'Local Government in the Northern Territory', a paper that was delivered by the then minister, Steve Hatton, to the IULA ASPAC Conference in Darwin last year. For your information, IULA stands for the International Union of Local Authorities in South-East Asia. 28 members attended that meeting in Darwin, which represented a third of the world's population. We are not talking chicken feed, to coin a phrase. We are talking big time. In that paper, he says: 'Local government is arguably the Territory's fastest growing industry'. He says that it is not growth in government for its own sake. He talks about other functions which may include social security and agency banking. He says that these communities are doing all that. He advocates: 'It is the Northern Territory's vision that small, remote and Aboriginal communities will develop appropriate, effective and efficient local government as a focus for self-management and self-determination'. They are his words, not mine, but they are fully supported. It is mainly in this area that I wanted to talk to the committee.

The other question I need to pose to you is: 'What is local government in the Northern Territory?' References within much of the Sessional Committee on Constitutional Development's material talk about states. In your opening address this morning, you have said that we are a

territory not a state and, as has been said before, the constitution of Australia does not apply to us. Sometimes I question whether we should keep paying taxes until we get that fair representation we hear so much about.

Local government in the Northern Territory is very young. That is indicative of some of the areas we have talked about, particularly with the community councils and associations. It even applies to municipal councils. This council in Katherine was only initially formed in 1978 at the same time as self-government for the Northern Territory. That is where you people are coming from. I think, before we pose too many questions and discuss too many issues, we need to go back and look at the powers of local government in the Northern Territory.

Here are a couple of quick examples. We do not have control of town planning responsibilities or building control. In all of those areas, those devolved powers have not been handed down. Let us face it. I believe that legislation is generally set out to give local government the responsibility to provide for the peace, order and good government of its district. I mean, that is what we are elected for. Along with that come all the social implications we are expected to get involved with. I think we need to find out what is local government in the Northern Territory, where we see it fitting in the proposed constitution and what its actual role will be. I think that has to be ascertained. Madam Chair, most of these little stickers relate to the Aboriginal aspect, and my belief that local government plays a major role.

We talk about Aboriginal culture. Of course, we have Wesley here from the electorate. As a traditional person, he knows what that means. As a long-term resident, I have major concerns. We hear politicians saying: 'Let us look at putting in Aboriginal culture'. I would like that defined also. What are you talking about in Aboriginal culture?

It is very important to realise that, among traditional Aboriginal people right around Australia, the cultures are all different. You know that and I know it. The cultural aspects need to be defined so that we ordinary people can understand what is being said. If you want an indication, we might talk about traditional ways of chasing kangaroos and all that. Those things have changed. In my opinion, culture has evolved. I believe that we should be looking at the 1995 version, the culture as it pertains today rather than 200 years ago. I think we would be causing a very big rift, not just in the Aboriginal community but in the wider community, if we did not define what we are talking about in terms of those cultures.

If I may, I would like to make some comment in relation to the Royal Commission into Aboriginal Deaths in Custody. I am sorry that I only got this the other day. I have only had a quick look at it. It has been in the news again quite a lot during the last few days. I would like to quote a determination by Mr Wootton. It is in the recommendations of the Royal Commission. As it relates to how we should deal with these Aboriginal problems in general society. He says: and I quote, 'For Australia, as for other countries, the problem is to reconcile demand for the recognition of special Aboriginal status and rights within existing institutional arrangements'. unquote. That seems to be lost in the general discussions which take place among people out there in the community as a whole. I would say again, from a personal point of view, that it creates social division. Let us just clarify what is meant by these sorts of things. Again, it comes back to your cultural law and the general law of the land.

Do you want the letter from Steve Hatton? It is nothing really important but it actually clarifies the position in relation to the recognition of small communities.

Mrs HICKEY: Yes, we will take that on. Thank you, Jim.

Mr FORSCUTT: Madam Chair, I would like to make a couple more quick comments. First of all, there is the matter of the Australian republic. I think it is a fait accompli that we will get there. My question is: 'What comes first, the chicken or the egg?' Does the republic come first or do we get statehood? It will be interesting to follow those developments.

I would like some more discussion in relation to the question of a Northern Territory bill of rights. Does the committee have a general thrust in relation to a bill of rights? What are you laughing at?

Mr BALDWIN: We have been asking ourselves the same question.

Mr FORSCUTT: It is an issue that is being talked about out there, in terms of whether we need it or not. That is the question that is being posed and I would like the opportunity to talk about that some more. That is all I have to say at this stage.

Mrs HICKEY: Thank you, Jim.

You raised the question of local government, and what it is. I think you are also looking for some definitions in relation to Aboriginal culture. I guess customary law is what we are looking at, more particularly.

Your comments are very valid. One of the reasons why local government does not appear in the exposure draft exposure at present is probably the fact that it is a matter requiring a lot more discussion and thought. In addition to your questions about what it is, we would certainly welcome some of your thoughts about that too. Whether they are municipal authorities or Aboriginal community government councils or associations, local governments are very important to the equation here. That is the grass roots level of government. Tim and I have both been involved in local government, as you know. I think that we really do need to nail some of those issues down. I thank you for your comments on that. We will take them on board in terms of what we are doing with this.

In relation to the question of customary law, I would agree that it is an evolving culture, not a dead one. We have been discussing how we should entrench customary law. At the moment, our view is that it should be given the same sort of status as common law. If you look down the list, you have your entrenched constitution, your organic laws and your legislative functions. Those can change. As you say, they are not set in concrete. They do change and evolve. You do not want to be saddled for ever more with something that is inappropriate for everybody, something that can only be changed by a complicated process such as a referendum. That is why we wish to give it recognition as something that does exist within the Northern Territory and is used within discrete groups. However, it is not something that will become unwieldy.

You also raised the question of the Australian Republic in relation to the Northern Territory as the seventh state. An interesting poll was conducted on that issue. 80% of respondents

supported the Northern Territory becoming a state. They also supported the concept that that should happen first. It can happen at either stage but we believe that would be a logical conclusion. We are aiming to have adopted a constitution prior to the grant of statehood. We are working towards the year 2001 for adoption of our constitution and for statehood.

Mr FORSCUTT: I have a quick question which relates to that. Are you talking about Senate representation? Will the Northern Territory constitution address that? How do you resolve those matters?

Mrs HICKEY: Some other members of the committee might have views on that. Perhaps Tim would like to say something about it.

Mr BALDWIN: I think that is something that we would negotiate with the federal government and other states at the time.

Mr FORSCUTT: So it will not become part of this.

Madam Chair, I did notice in here that you wanted some feedback on Aboriginal and traditional areas where there is local government. One of my member associations now has a problem because buildings have been built on traditional Aboriginal land. The Northern Land Council is now considering charging rent to that local government, for the land on which the buildings have been constructed. It is traditional land in another sense. I am just suggesting to the committee that there are some concerns out there which need to be resolved.

Mrs HICKEY: That is one of the issues that we canvass in the exposure draft. Steve talked about it at the last meeting.

Mr FORSCUTT: Yes, I have seen it in there. I mentioned it because I have actually come across it. There is some concern as it involves ...

Mr BALDWIN: Can I just ask you a question? Looking at local government on a holistic basis, whether it is municipal or community government, where do you see it fitting in the new constitution for the Northern Territory?

Mr FORSCUTT: In what role, or where would I see it sitting?

Mr BALDWIN: How would you see it entrenched? What parts of it would be entrenched? I mean we could just generally say that, in the constitution ...

Mr FORSCUTT: I think we need to define it first, Tim.

Mr BALDWIN: Given that we need to do that ...

Mr FORSCUTT: Then we entrench it as a right.

Mr BALDWIN: As a right. We do not just recognise ...

Mr FORSCUTT: No. I think it has to be a right.

Mr BALDWIN: A right for all people to have local government.

Mr FORSCUTT: Yes. It relates to discussions that you and I have had before. Do we incorporate the whole of the Northern Territory as a local government area, for rating purposes and financial assistance grant funding? It is a big issue.

Mr BALDWIN: Would it mean that, under the new constitution, the state government would not have the right to take away local government?

Mr FORSCUTT: That is right.

Mrs HICKEY: What about the situation in which a local government finds itself in a difficult situation?

Mr FORSCUTT: Most definitely, there should then be a period or a given area for that council to explain itself. If it cannot do so, I would think that the government or the minister would have a right to intercede. I do not have a problem with that if the council is proven to be in default.

Mrs HICKEY: Those are the issues that we need to draw out.

Mr BALDWIN: They are some of the things that we are tackling. If we just make a general statement that local government is recognised and entrenched in the constitution, how far do we go with that entrenchment?

Mr FORSCUTT: Does it become another tier of government in its own right?

Mr BALDWIN: It is anyway.

Mr FORSCUTT: It isn't. That is the point. It is governed by legislation.

Mr BALDWIN: Do you know whether the Local Government Association of the Northern Territory will be putting another hat on you?

Mr FORSCUTT: I spoke to my executive officer today. I will give him a quick briefing on what has come out of here today, and ask him to have a look at it.

Mr BALDWIN: I would like to see it as an agenda item for your next major meeting.

Mr FORSCUTT: The Chief Minister is coming to our AGM to talk about statehood. In that context, LGANT may be able to develop a position paper.

Mr BALDWIN: The committee is yet to come to grips with the bill of rights. I think we will find that our views are pretty diverse in relation to that, so by all means have your say about it.

Mr FORSCUTT: Thank you.

Mrs HICKEY: Does anybody else have questions or comments?

As Tim said, the issue of the bill of rights is thorny. There is not only the question of what, if any, aspects should be incorporated into a constitution. It really does come down to deeply held philosophical views. Of course, they can be very divided. If any of that was included in an exposure draft, it would be presented as a range of options. That is what we have done to date. Rather than agonise endlessly, we have acknowledged that there will be some issues on which we would never agree. I suppose that is why we have different political parties in the first place. We present the options to people, indicating that we have considered them, and we leave it to the constitutional convention to actually make the hard decisions at the end of the day.

It is interesting. I know that Tim likes us to make some decisions, and that is a good thing. Many of us want to hedge our bets a bit, I suppose. Of course, at the end of the day the constitutional convention will have to make those sorts of decisions. We are trying to do as much of the groundwork as we can beforehand.

Mr BALDWIN: However, the whole thing will come back to people like yourselves.

Ms CHOLSH: Madam Chairman, I do not have any submissions to make. I came as a resident of Katherine to get information about something which I did not know anything about. I saw the advertisement in the paper and it said that you were taking submissions. I did not have any material to work on so I am pleased that there is material here. Your summary gave some enlightenment about that. I was also going to suggest that the show would be a good place but you have covered that one. You must have found that out already. In every place you have been to, you have been preceding the show.

If I understand correctly, you hope to have about 70 people on a constitutional convention. Is that right?

Mrs HICKEY: Yes. 75% of the convention will be elected and the balance will be nominated. Members of the committee will also be part of the convention.

Ms CHOLSH: I may have missed something, but do you mean that there would be information and publicity before you came to that point?

Mrs HICKEY: Very much so. Obviously, we will have to be involved in a very large scale election exercise. There will be 10 electorates, each electing 5 members. We will divide the Territory up in that way so interest groups in the community can put forward candidates for election. These elections will be held in the same way as Territory elections. As a precursor to that, it is obviously important that a lot more information goes out to people in terms of what it is all about.

In a way, it is a pity that the show has come after our public meetings. I know that, in the towns we have visited so far, a great deal of interest has been generated through the show stand. Probably, the best timing for these meetings would have been almost directly after the show. Politicians being politicians, they follow the shows and then disperse. We could not get people together to do that. There will, however, be more public meetings and public hearings. We are coming to Katherine again in November. We will certainly be upping the ante with advertising and public promotion. Otherwise, we will not get nominations for the constitutional convention.

Ms CHOLSH: No, you are not. That information and publicity is needed. For example, I asked several people whether they were coming this evening. They are physically unable to do so because they are at the show. It is already in final preparation.

Mrs HICKEY: Yes, that is right. As you can imagine, it is very difficult. During the 10 years of the committee's existence, we have visited all of the urban centres and many Aboriginal communities. You can never get a good time for everybody. That is the sad fact of the matter. Some people prefer daytime meetings and some people prefer something at about this time.

We have been as thorough as possible in covering the areas. For example, because we have found it very difficult to get Aboriginal representation, we approached the ATSIC regional councils this year. Those councils are generally made up of people representing particular areas. Some of the people from the more remote areas come to a central point for those meetings. We get an opportunity to see them on their turf in their meetings. We do try very hard.

We also respond to local requests. For instance, if a local group or Katherine as a community makes a request for more information on the general issues or particular issues, committee members or our executive officer will make themselves available.

Ms CHOLSH: Thank you.

Mr MITCHELL: Dawn, to follow up the comments Maggie made about the committee's activities over the years, it has basically taken 9 years to reach this point. Many hearings have taken place and a lot of information has been gathered. That has been noted and considered, and the lawyers have been involved. We have finally come up with a clear statement. We have reached a stage at which we are really pushing it to the public and getting as many people involved as possible. During the next 12 months, you will see a lot more advertising and so forth. We will be back for more hearings and we hope that today's hearing will be the start of spreading a wider awareness.

Ms CHOLSH: You said that the committee would make people available to speak at small gatherings. It could be a local church group or a committee of interest of some description.

Mrs HICKEY: Yes. Because this is a bipartisan committee, we have members from up and down the track. Although we do not have a member from Alice Springs, Tim is a resident of Katherine. So you have a member of the committee here. Your local members also have information. Certainly, we welcome public requests for meetings and we will certainly make ourselves available to attend.

Ms CHOLSH: Thank you. Something struck me in relation to Jim Forscutt's comments. In terms of local government as a right, does that mean that 3 or 4 people in some remote community suddenly have the right to form a local government? It is a ludicrous thought.

Mr MITCHELL: It depends on your definition of local government.

Ms CHOLSH: That is what I mean. It seems rather a contradiction.

Mr MITCHELL: There are a lot of small outstations in Arnhem Land in particular and just about all over the Territory. There are groups exactly like you are talking about. However, they

link in with another bigger group nearby. Several outstations become part of a larger community which might have local government.

Mr BALDWIN: Although the point may not have been made very clearly, I think the first step is to recognise local government in the constitution, full stop. At the moment, there is no constitutional recognition of local government. Having come from local government, I know that you tend to feel a little bit feeble about what your powers and rights are within the layers of government within Australia. Even at the national level, it is not recognised.

Ms CHOLSH: That is different to a bill of rights, however, which was where the mention of local government came in.

Mr MITCHELL: We should not forget that it has been nearly 100 years since the constitution has been worked through like this. We are all in a position to have a brand new, state-of-the-art constitution. That is why so many new things are coming into it.

Mr FORSCUTT: Madam Chair, while Phil was responding to Dawn's question, I wondered whether a referendum of the people of the Northern Territory will have to be held at some stage. What sort of time frame would you be looking at for that to occur? That is what I was on about.

Mrs HICKEY: Jim, we intend to form the constitutional convention next year, 1996. We are looking to put something before the people in 1997-98. The way in which we frame the referendum will be important. Will it be a simple yes or no? Will we divide the constitution into different sections so that people can vote on particular aspects? For example, if we used this document and asked people to tick a box indicating yes or no for each clause, we could end up with a real mish mash. We would need to have broad areas which were set up for people to say yes or no - for example, the broad concept of a constitution. Then there could be options for a yes or a no. For instance, do we want a bill of rights?

The federal government would have 2 possible approaches. It could put the matter to a referendum of the Australian people or it could pass an act of parliament. We would favour the latter approach because it is much more straightforward. However, we have plenty of people to convince in that regard. The federal government has to be convinced that the people of the Northern Territory want statehood and are ready to take it. We really do need the tacit support of the other states. Whilst they do not necessarily have to be involved directly because the federal government can pass an act, there is no doubt that their support will count a great deal toward our bid for statehood.

Mr BALDWIN: The task of the convention, Jim, will be to produce a constitution that will then go to the people at a referendum.

Mr FORSCUTT: In that time frame. 1998, was it?

Mr BALDWIN: Yes.

Mr PEIRCE: I have 2 questions. Firstly, could you elaborate a little on the processes that you see as determining who might be elected to the constitutional convention. What are the ways in

which you have tried to ensure that there will be a balance of views in constructing a Northern Territory constitution? Secondly, do the committee's terms of reference cover the question of whether statehood and a constitution are the best way to go, or has the committee considered that? Another idea, which has been mooted for some time, is the possibility of regionalising areas of Australia according to their economic and population base rather than according to arbitrary lines on a map. Has the committee considered whether or not it is better to remain a territory? Have points for and against those sort of things been published for the general public to get a handle on?

Mrs HICKEY: Thank you, Mick.

Your first question relates to the multi-member electorates and the way in which we will elect a constitutional convention. The committee's current recommendation to the parliament - and it is only a recommendation - is that 75% of the convention be elected from 10 electorates, each providing 5 members. We hope that the multi-member electorates will provide broad representation from those areas. It will not be just be one person representing one region. Hopefully that will provide broad representation. Again, of course, that very much depends on who puts their hand up for election.

That is why this process is very important. We want to make sure that there is interest from all of the representative groups that consider themselves to be people who should be making decisions on this sort of matter in the Northern Territory. From that we go to the nominated members from groups such as the young, the old, Aboriginal, non-Aboriginal, ethnic bodies and people with particular interests such as business, pastoralists, unions, women's issues and so forth. That is how we hope to bring about a convention that will be as broadly representative of Northern Territory people as we can make it. That is the basis of the recommendation that we will be putting to the Northern Territory parliament, which will make a decision on whether to adopt the mix that we are suggesting. Obviously, at some stage we have to make some rules under which we can operate the convention. That deals with that aspect.

You also raised the issue of the committee's terms of reference. The committee is required to report and make recommendations to the Legislative Assembly on a constitution for the new state, as such, and the principles upon which it should be drawn. This includes legislative powers, executive powers and so forth, and the issues, conditions and procedures pertinent to the entry of the Northern Territory into the federation as a new state, together with such other constitutional and legal matters as may be referred to it by ministers from time to time. In short, the committee is not considering anything but a constitution for a new state. The issue of regional government, or regionalisation on a community of interest basis, is not covered by this committee's terms of reference.

Ms LEE: Just getting back to the composition of the convention, will you be holding the elections for the people first and then choosing who the nominated people should be, or just hoping that it is all going to work out?

Mrs HICKEY: We have to debate it in parliament because we will have to actually name the organisations from which we wish to get nominees. In a way, we hope to have it right at the point when the parliament actually lists those nominated parties. Obviously, in doing that, we would

have to seek agreement from the nominated groups that they see the exercise as valid and intend to participate.

For instance, the land councils could say: ‘We do not see themselves as having a voice because our constituents are constituents of the Northern Territory. We would prefer to see them nominate people from within the elected members. We would perhaps prefer ATSIC or some other Aboriginal body, or independent health organisations, to have a nominee’. We still have to discuss those sorts of issues because parliament will want to know what homework has been done by the committee rather than just whistling up a list of people.

Mr BALDWIN: It will be debated and determined prior to any vote.

Mrs HICKEY: Yes.

Mr MITCHELL: On a broader scale, every one of the 25 members will probably have to canvass his or her own electorate to get as much feedback as possible so that the issues can be properly debated in parliament. Hopefully we will come up with the right mix.

Mrs HICKEY: I would imagine that we would be providing some sort of suggested list and calling for comments and further submissions on that. This comes back to the very valid point that was made earlier in relation to dissemination of information. Unless we do that properly, we will not get broad representation from Territorians.

Mr PEIRCE: Earlier on you raised some of the problems within this particular committee in relation to the bill of rights. I think you used the words: ‘on a philosophical basis’. Just as a matter of interest to myself and other people here, is there a philosophical problem within the committee, which will obviously carry over into the convention to some extent, with enshrining the rights of the individual as against enshrining the rights of the collective man or woman? Is that the problem? Or does the problem centre on the enshrining of a bill of rights in a constitution, as in the American constitution?

Mrs HICKEY: I will have a go at answering that. I think it probably revolves around the business of whether one should enshrine a bill of rights in the constitution when we know that circumstances and views change over the years. We might find that we end up with entrenchment of rights that are no longer valid or pertinent. That is one issue.

Mr BALDWIN: Perhaps more important is the issue of what happens if, in entrenching individual rights, you leave some rights out. Does that mean that they are not rights? That is the problem. Once you start listing things, it is the ones that you do not list that cause the problem. That is the philosophical point you reach. The question then becomes: do we need it or should we leave it alone and continue it as common law? It is a crunch issue.

Mr MITCHELL: Enshrining it in the constitution.

M BALDWIN: You have to keep in mind that anything you put in the constitution has to be changed by way of referendum. Once it is there, as we know from national referenda, it is very difficult to change. In some cases, the less you say the better.

Ms CHOLSH: If there was a clash of opinions or values in relation to a state constitution, and the federal constitution did not have a bill of rights, what would happen? If the federal constitution had no bill of rights, would we be able to have one?

Mrs HICKEY: I think so, if it does not clash and we are not at odds with the federal constitution. If we were trying to entrench something that is not considered in a de facto sense to be a right for all Australians, I think the federal government would be telling us to go back to the drafting table. I guess everything that we put into our constitution has to meld with the Australian constitution. That does not mean that we cannot have more in our constitution.

Tim was right. When you put things into a bill of rights, what you leave out becomes important. For instance, if you put in a whole range of rights but left out freedom from slavery, does that mean by definition that the Northern Territory would endorse, at any time, under any circumstances, some form of slavery?

Ms LEE: It has been suggested that there may be a clash between providing a right to free speech and enacting racial vilification legislation.

Mrs HICKEY: Yes, that is a very valid example - freedom of speech as opposed to racial vilification or anti-discrimination. We have anti-discrimination legislation already.

Ms LEE: Whatever the federal government decides would take precedence.

Mrs HICKEY: Because they will ultimately decide whether or not we get statehood, we are in their hands to that extent.

Mr BALDWIN: They are not going to agree to everything that conflicts with the federal constitution.

Mrs HICKEY: Our laws have to be in conformity with Commonwealth law. We cannot differ markedly.

Mr FORSCUTT: Following on from that, which law supersedes the other? Does the anti-discrimination act overshadow the racial vilification act? Which act really is the pertinent one if you start talking about that? For example, if I were to stand up and speak rancorously against some colour, creed or ethnic group, I might be taken to court. In relation to your comment, Maggie, in terms of a bill of rights, would rights of free speech override the racial vilification act or not? Where does it all end? You do not have to answer it, but it seems to leave the area open to many questions. Perhaps we have too many acts.

Mrs HICKEY: Yes, absolutely. That is right.

Mr FORSCUTT: There are 7 judges on the High Court but we will not go into that.

Mrs HICKEY: None of us are lawyers. We quail about it.

Mr MITCHELL: Another interesting point, which many people do not realise, is that the states originally created the federal constitution. On the federal scene 100 years ago, the states gave us what we have today.

Mr FORSCUTT: Quite clearly, the constitution of Australia does not apply to the Northern Territory.

Mrs HICKEY: Well, we are all subject to it.

Mr BALDWIN: The constitution applies to all federal acts and we are covered by a federal act.

Mr GRAY: Madam Chairman, if I might comment on that, we are a Territory of the Commonwealth. The Commonwealth has full plenary power over the Territory. That is the main thing. We are a creature of the Commonwealth

Mr FORSCUTT: I am talking about the constitution as we know it in Australia. My question is: it does not apply to the Northern Territory, does it?

Mr GRAY: Yes, the territories are covered by section 122.

Mrs HICKEY: What we are seeking is a home-grown constitution for our own state.

Mr FORSCUTT: I was going to say that section 100 of the federal constitution refers to all rivers and waters, and absolute rights over conservation and irrigation.

Brief comments by Mr Forscutt and others at this point were inaudible on the recording of proceedings.

Ms TAPP: Can individuals nominate or do you have to be nominated by a group?

Mrs HICKEY: Individuals would presumably stand for election and become part of the 75% of elected members.

Ms TAPP: So it is like a local election, like running for the council.

Mrs HICKEY: It is like the Senate system. If you win 17.5% or 17.66% of the vote in a multi-member electorate, you would be elected. Steve mentioned this at the last meeting.

Mr BALDWIN: Keep it in mind that there would only be 10 electorates across the Northern Territory. The electorates would be much bigger than those we represent.

Mrs HICKEY: In fact, it is 16.66% of the vote. If you can attract such a vote, you will be elected to the convention.

Ms CHOLSH: Has the committee considered whether voting will be compulsory in all electorates?

Mrs HICKEY: Voting is compulsory in the Northern Territory so I imagine that it would apply to this as well.

Ms TAPP: Who decides on the boundaries of the electorates? Have you been through all this?

Mr BALDWIN: We have dodged that issue. What we have said is that there should be 10 electorates.

Mrs HICKEY: We might leave that with the people who draw up electoral boundaries. We might charge them with it.

Mr MITCHELL: It will be done along the lines of population in particular areas.

Mr GRAY: Madam Chairman, those particular issues will be left for the Legislative Assembly to debate and legislate on. No doubt the Electoral Commission will be charged with developing the boundaries.

Mrs HICKEY: If there are no further questions or comments at this point, I will close this meeting with a heartfelt thank you to people for their attendance, their comments and their questions. It has been a very worthwhile session from our point of view. We hope that you will come along to the November session. We also encourage you to look at the show display, including the video which provides a synopsis of what has occurred so far, and the print material. We would urge people to take copies of the discussion papers which are here, and to have a look at them.. Finally, we repeat our invitation. If specific groups would like the committee to attend meetings, we would be more than happy to do so. Thank you.